AND
BRIEF

No. 15-1194

IN THE

Supreme Court of the United States

LESTER GERARD PACKINGHAM, JR.,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

On Writ of Certiorari
to the Supreme Court of
North Carolina

JOINT APPENDIX

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Petition for Writ of Certiorari Filed: March 21, 2016
Certiorari Granted: October 28, 2016

TABLE OF CONTENTS

Relevant Docket Entries from North Carolina Durham County, Superior Court Division, File Nos. 10-CRS-57146 and 10-CRS-57148 1

Relevant Docket Entries from North Carolina Court of Appeals, Case No. COA12-1287 3

Relevant Docket Entries from Supreme Court of North Carolina, No. 366PA13 5

MATERIALS IN THE SUPERIOR COURT RECORD

Excerpts from Transcript of Hearing, April 5, 2011 8

Testimony of Officer Brian Schnee 9

Testimony of Christian Johnson 116

Motions Hearing Exhibits

Excerpts from Defense Exhibit 1 123

State Exhibit 18 136

Stipulation by Parties for Trial as to the Underlying Crime, May 29, 2012 137

Stipulation by Parties for Trial as to Acknowledgment of Registry Obligation and Attachments 138

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The following opinions and statute have been omitted in printing this Joint Appendix because they appear at the following pages in the appendix to the Petition for a Writ of Certiorari:

Decision of the Supreme Court of North Carolina 1a

Decision of the North Carolina Court of Appeals 36a

Order of the Superior Court, Durham County 54a

N.C. Gen. Stat. § 14-202.5 ..... 66a

STATE OF NORTH CAROLINA
DURHAM COUNTY, SUPERIOR COURT DIVISION

State of North Carolina v. Lester Gerard Packingham
File No. 10-CRS-57148

RELEVANT DOCKET ENTRIES

Date Filed	Docket Text
07/23/2010	North Carolina, Durham County, General Court of Justice, District Court Division. Warrant for Arrest.
09/20/2010	North Carolina, Durham County, General Court of Justice, Superior Court Division. Indictment.
12/09/2010	North Carolina, Durham County, General Court of Justice, Superior Court Division. Motion to Dismiss Charges Against Lester Gerard Packingham for Unconstitutionality of Statute, File No. 10-CRS-57148.
12/30/2010	North Carolina, Durham County, General Court of Justice, Superior Court Division. Motion to Declare N.C. Gen. Stat. § 14-202.5 Unconstitutional in the Case of Christian Martin Johnson, File 10-CRS-57146.
04/05/2011	North Carolina, Durham County, General Court of Justice, Superior Court Division. Motion Hearing Exhibits.

04/19/2011	North Carolina, Durham County, General Court of Justice, Superior Court Division. Order on Defendants' Motions to Dismiss.
05/28/2012	North Carolina, Durham County, General Court of Justice, Superior Court Division. Trial Exhibits.
05/29/2012	North Carolina, Durham County, General Court of Justice, Superior Court Division. Stipulation by Parties for Trial as to Underlying Crime.
05/29/2012	North Carolina, Durham County, General Court of Justice, Superior Court Division. Stipulation by Parties for Trial as to Acknowledgment of Registry Obligations and Attachments.
05/30/2012	North Carolina, Durham County, General Court of Justice, Superior Court Division. Verdict.
05/30/2012	North Carolina, Durham County, General Court of Justice, Superior Court Division. Notice of Appeal.
06/07/2012	North Carolina, Durham County, General Court of Justice, Superior Court Division. Transcript of Motions Hearing, April 5-7, 2011.
07/31/2012	North Carolina, Durham County, General Court of Justice, Superior Court Division. Transcript of the Trial, May 29-30, 2012.

NORTH CAROLINA COURT OF APPEALS

State of North Carolina v. Lester Gerard Packingham
Case No. COA12-1287
Durham County No. 10-CRS-17148

RELEVANT DOCKET ENTRIES

Date Filed	#	Docket Text
10/25/2012	1	RECORD FOR: Defendant-Appellant Packingham, Lester Gerard BY: Mr. G. Glenn Gerding LAW OFFICE OF GLENN GERDING
12/10/2012	3	APPELLANT BRIEF FOR: Defendant-Appellant Packingham, Lester Gerard BY: Mr. G. Glenn Gerding LAW OFFICE OF GLENN GERDING
03/14/2013	7	APPELLEE BRIEF FOR: BY: Mr. David Elliott N.C. DEPARTMENT OF JUSTICE
05/16/2013	8	MEMOS FOR: Defendant-Appellant Packingham, Lester Gerard BY: Mr. G. Glenn Gerding LAW OFFICE OF GLENN GERDING

5/16/2013	9	**MEMOS** **FOR:** **BY: Mr. David Elliott** **N.C. DEPARTMENT OF JUSTICE**
05/20/2013	10	**MEMOS** **FOR: Defendant-Appellant** **Packingham, Lester Gerard** **BY: Mr. G. Glenn Gerding** **LAW OFFICE OF GLENN GERDING**

IN THE SUPREME COURT OF NORTH CAROLINA

State of North Carolina v. Lester Gerard Packingham

No. 366PA13

RELEVANT DOCKET ENTRIES

Date Filed	#	Docket Text
08/23/2013	BL-1	APPLICATION FOR TEMPORARY STAY (Allowed) - 08-26-2013; FOR: Appellant State of North Carolina; BY: Ms. Anne M. Middleton; N.C. DEPARTMENT OF JUSTICE
08/23/2013	BL-2	PETITION FOR WRIT OF SUPERSEDEAS (Allowed) - 11-07-2013; FOR: Appellant State of North Carolina; BY: Ms. Anne M. Middleton; N.C. DEPARTMENT OF JUSTICE
09/24/2013	BL-3	NOTICE OF APPEAL BASED UPON A CONSTITUTIONAL QUESTION (Dismissed) - 11-07-2013; FOR: Appellant State of North Carolina; BY: Ms. Anne M. Middleton; N.C. DEPARTMENT OF JUSTICE
09/24/2013	BL-4	PETITION FOR DISCRETIONARY REVIEW (Allowed) - 11-07-2013; FOR: Appellant State of North Carolina; BY: Ms. Anne M. Middleton; N.C. DEPARTMENT OF JUSTICE

10/02/2013	BL-5	RESPONSE TO PETITION FOR DISCRETIONARY REVIEW; BY: Mr. G. Glenn Gerding; LAW OFFICE OF GLENN GERDING
10/02/2013	BL-6	MOTION TO DISMISS APPEAL (Allowed) – 11-07-2013; FOR: Defendant-Appellee Packingham, Lester Gerard; BY: Mr. G. Glenn Gerding; N.C. APPELLATE DEFENDERS OFFICE
01/13/2014	BL-8	APPELLANT BRIEF; FOR: Appellant State of North Carolina; BY: Ms. Anne M. Middleton; N.C. DEPARTMENT OF JUSTICE
03/14/2014	BL-10	APPELLEE BRIEF; FOR: Defendant-Appellee Packingham, Lester Gerard; BY: Mr. G. Glenn Gerding; N.C. APPELLATE DEFENDERS OFFICE
09/03/2014	BL-11	MEMOS; FOR: Defendant-Appellee Packingham, Lester Gerard; BY: Mr. G. Glenn Gerding; N.C. APPELLATE DEFENDERS OFFICE

11/26/2014	BL-12	MEMOS; FOR: Defendant-Appellee Packingham, Lester Gerard; BY: Mr. G. Glenn Gerding; N.C. APPELLATE DEFENDERS OFFICE
11/06/2015	BL-15	Opinion: Cert Date: 11-30-2015; Author: Honorable Robert H. Edmunds, Jr.; Decision: Reversed; Opinion Notes: Hudson, J dissenting with Beasley, J joining in this dissenting opinion Ervin, J did not participate in the consideration or decision of this case; Opinion Pages: 35; Opinion Cost: $ 7.00

COURT REPORTER'S TRANSCRIPT
April 5, 2011

State v. Johnson and Packingham

10-CRS-57146, 10-CRS-57148

Transcript of the proceedings taken in the General Court of Justice, Superior Court Division, Durham, North Carolina, at the April 5, 2011, Criminal Session, before the Honorable Michael Morgan, Judge Presiding.

This is a partial transcript of the proceedings in the above-named matter conducted on this date.

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* * *

[9:6]

THE COURT: All right. Defense Exhibit 2 is accepted into evidence.

All right, sir. You may come up to the witness stand.

WITNESS: Yes, sir.

Officer Brian Schnee, being first duly sworn, testifies as follows on direct examination conducted by Mr. Gerding:

Q Good morning.

A Morning, sir.

Q Could you please state your name for the record?

A Brian Schnee.

Q And where are you employed?

A I am employed with the City of Durham, specifically the Durham Police Department.

Q How long have you been in the police department?

A I was hired by the City of Durham October 2001. [10]

Q And what rank, what position do you hold?

A My rank within the Durham Police Department is a Corporal. The position I hold is one of two supervisors for the Durham Police Department Homicide Unit.

Q Is it appropriate for me to refer to you as Corporal?

A Whatever you prefer, sir.

Q Okay. Corporal, you said right now you're working on homicide cases?

A I was assigned as a supervisor with the Homicide Unit in August of 2010, sir.

Q Before that, what were your responsibilities as an officer?

A Prior to that, I was one of the two supervisors for the Durham Police Department Juvenile Investigative Unit, sir.

Q What were your responsibilities with that unit?

A Primary responsibilities? I reviewed all cases reported to the Durham Police Department or all incident reports written by Durham police officers involving juveniles, whether juveniles were the victims of an offense or juveniles were the suspects of the – of the offense that was indicated in the report, sir.

Q Were you an investigator, as well as a [11] supervisor?

A I was both, sir. I'm required to know what my investigators are doing, and I handled cases at the same time, sir.

Q Did you have an occasion to become involved in an investigation involving Christian Johnson?

A I did, sir.

Q And how did that investigation begin?

A Myself and my direct supervisor at the time, Sergeant Addison, assisted a – a report was made to the Durham Police Department where a registered sex

offender allegedly accompanied a[n] elementary school field trip to the zoo.

When that individual was arrested, he was on-line, accessing his Facebook account, according to the Sheriff's Department that arrested him.

I became intrigued or interested in seeing if there were any registered sex offenders in Durham County also accessing social networking websites.

Q So the person whose case or investigation sort of sparked your interest literally was at a computer, on a Facebook page when arrested?

A According to the – I believe it was Pitt County, but it was somewhere out toward Greenville when they notified us that they had served our arrest warrant, [12] "our" being Sergeant Addison's arrest warrant.

They let him know that he was on – on his computer at the time when they made entry into his house. And they said, "Yeah. And by the way, we charged him with 14-202.5, Subsection A, which prohibits sex offenders from accessing certain social networking websites." And that just – honestly, that piqued my curiosity, sir.

Q And from there, what did you do to satisfy your curiosity?

A From there, I went on Family Watchdog, an Internet website, where I was able to obtain a list of what they reported to be registered sex offenders in Durham County.

I then went to the State registry – I believe it was on the Department of Justice website – and accessed those names, to ensure that they were, in fact, registered sex offenders with the State.

From there, I used search functions on the Myspace.com and Facebook.com to see if I could find any matches, sir.

Q When you say you used search functions on Myspace.com and Facebook.com, do you mean that you actually logged into each of those services and used a search feature within the service itself? [13]

A Myspace.com did not require me to log in to set up a profile page in order to – in order to enable a people search.

Facebook.com did. So I did have to log into my personal Facebook account, and then use a people finder or a people search under Facebook.

But Myspace did not require me to log into the site in order to – like I said, in order to search for people, sir.

Q So with Myspace.com, when you were searching, you still were at a Myspace.com address; you just had not created an account to log in?

A Correct. I mean, I went to Myspace.com.

Q It wasn't as if you used Google.com to search.

A No, sir. I went to Myspace.com home page and used – I utilized their people search function.

Q And what did your investigation on Facebook and Myspace reveal to you that was of interest?

A I found approximately seven – well, I found multiple matches from what I – from what appeared to be individuals that I had found on the Family Watchdog list that I then verified through the State website that had both Myspace and/or Facebook pages.

I was able to identify, I believe, eight pages that had been accessed since the law that prohibited [14] registered sex offenders from accessing those websites when it went into effect. I was able to find eight pages that it appeared had been accessed after the law had been put into effect.

Q And when you say eight pages, do you mean eight separate individuals' pages, or eight pages for one individual?

A It was eight separate pages combined, Myspace and Facebook, on seven individuals. One individual had two Facebook pages.

Q And were two of the people that you –

A I'm sorry. Can I correct – can I correct –

Q Sure, absolutely.

A My numbers may be off, but I know one person had two Facebook pages, one person had a Myspace page and a Facebook page at the same time. But so – but I believe I had seven – it was either seven or eight individuals.

But I know that, like I said, one person had two Facebook pages and one person had a Myspace and a Facebook page. Both had been accessed after the law went into effect, sir.

Q And just to clarify, as far as the technology goes, because I think a lot of this is fairly intricate, when you say a person had one page, you mean one account? [15]

A Yes, sir. I'm sorry. I'm – I say page, but a profile – an individual profile account within either Myspace and/or Facebook.

Q So, for example, some of the discovery that I've reviewed in this case indicates, for example, that a defendant may have had five pages on Myspace, but what you're saying as a page, you mean all of that together.

A Yes, sir. I'm saying when I – when I log in and I see the screenshot or the front, when you log into, say, your personal social networking website account, I just counted that as a page.

So I'm just saying the main screenshot that I see, I just counted that as – when I use the term page, I'm meaning the entire account. I'm not saying your likes page, your dislikes page, your – your education page.

I'm just saying your account as a whole. I'm using the term page. So I'm not saying multiple pages. I'm just saying that's the – I'm using page as account.

Q What did you do after you identified these seven individuals as people that you also believed were registered sex offenders in Durham?

A Yes, sir. Once I was able to obtain the unique ID assigned to that account by either Myspace and/or Facebook, I completed a search warrant for Myspace and/or [16] Facebook. I presented them – I've presented those search warrants before a Superior Court judge here at the courthouse.

When those search warrants were signed, I then served them on Myspace and/or Facebook to get the account information, the identifying information for the person that set up the account provide – that was provided to Myspace and/or Facebook and any

associated pictures, links, related comments, anything like that, sir.

Q And after you served the search warrants on Myspace and Facebook to get that information, what happened?

A Within a period of days to a couple of weeks, I started getting information from the two different companies. Both are based out of California.

I was able to get what I believed to be was identifying information, information that was provided to Myspace and/or Facebook by the individuals that set up the account. I was able to get pictures. I was able to get IP address logs, various comments that were made by the individuals or to the individuals on their individual pages or accounts, postings that were made.

Based on all the information I gathered then, I obtained warrants for arrest for those individuals from the Durham County Magistrate's Office for a violation of [17] North Carolina General Statute 14-202.5, Subsection A, sir.

Q And was Christian Johnson one of those individuals?

A Based on an investigation into a Myspace account, yes, sir.

Q And what did you find in your investigation specific to Christian Johnson and the Myspace page?

A The Myspace page was listed under the initials CMJ. When I did a people search for Christian Johnson in the Durham area, I located a match – a probable match under – listed by the name of – under the name CMJ.

When I – when I was able to go to the page, I had seen a picture that was posted on the Department of Justice website. The individual that I saw on the profile – or on the Myspace account CMJ appeared to be the same individual.

There was some listed identify – or listed information – information concerning Mr. Johnson, the fact that he was six-four, a Caucasian male from California. And I believe it listed his zodiac symbol on the Myspace page.

Well, when I looked at the listed date of birth on the Department of Justice website, used the Internet to pull up a list of zodiac signs and what the date of [18] birth ranges were, it appeared that the date of birth for Mr. Johnson fell within the zodiac sign that was listed on that Myspace page.

Based on the pictures looking alike, I drove by the address where Mr. Johnson was registered with the Durham County Sheriff's Department. Out in front of the house was a vehicle with a California license plate. I had the – I was informed that the license plate that was displayed on the car was registered to Mr. Johnson.

Putting that with the information listed on the Myspace page, that he was from, I believe, Whittier, if I'm not mistaken, California, and the pictures that I believed to be were Mr. Johnson, I believe it showed that the last access on the page – Myspace lists the last access – early February 2010, if I'm not mistaken, the third or fourth.

Based on that, that's when I obtained the search warrant for Myspace concerning Mr. Johnson, sir.

Did that answer your question?

Q Yes.

A Yes, sir.

Q After you got that search warrant – is that the search warrant you served on Myspace?

A That's the search warrant I served on Myspace, yes, sir. [19]

Q And what did they return to you regarding Mr. Johnson?

A They – Myspace responded back with a lot of information in a – like a Microsoft Excel package, sir, things like pictures, comments.

Specifically, what exact information did Myspace respond back? I'd have to look – I'd have to look at the sheets that they were – responded back with. They did send copies of pictures and things like that, which appeared to be the exact same photos that I could see on the Myspace page when I accessed it initially, sir.

Q And is that information what you have provided to the District Attorney to be provided as discovery?

A What I did for my – we call it a felony screening. But from my packet, I included everything. I scanned everything onto a disk, and I supplied it to the District Attorney's office. So everything is on there, yes, sir.

Q In your review – excuse me. In your review of all of the web pages on the Myspace website that you believed were attributable to Mr. Johnson's account –

A Yes, sir.

Q – you didn't find any evidence that he had communicated with any minors; did you? [20]

A Not – not that I'm aware of, no, sir. I didn't see anything that appeared to be the communication with a minor. No, sir.

Q Okay. You didn't end up charging him with anything related to communications with minors?

A No, sir. The only thing he was charged with was accessing the website.

Q And as far as your review of the photographs that he had posted on the Myspace website –

A Sir.

Q – whether it was on a photographs page specifically, or his home page specifically, there weren't any photographs of children or pornography or anything that you thought was in any way obscene.

A If — if memory serves, sir, I believe the only photograph of a minor on the page, I believe, according to comments, might have been one of his own children.

And if I'm not mistaken, if I remember, comments were made from other folks, I believe, that pertained to one of his specific children.

And I don't know if he has multiple or just one, but I believe it was a child of his, sir. And nothing inappropriate, no, sir.

Q But it was not inappropriate, that comment?

A No, sir. [21]

Q So other than the access and the maintaining of that website, there wasn't any other charge that you

brought against him based on what you saw on those pages or as part of your investigation?

A No, sir. No – no other charges were brought against Mr. Johnson.

Q And I believe, as part of this, you seized his computer?

A Yes, sir.

Q You didn't find any child pornography or anything, other illegal activity on that computer; did you?

A I do not – I do not believe I have completed a search warrant for his computer. So his computer is still seized, and I cannot say that we have searched his computer as of – as of today. You know, from then until now, I can't say that we've done that, sir.

Q But at least as of today, he doesn't face any charges related to anything –

A Absolutely none coming from me, sir.

Q And I believe you did say that you verified that Mr. Johnson, at least at the time of the offense that you charged, was a registered sex offender?

A Yes, sir.

Q Did you find any evidence that he is ever [22] improperly or not registered as a sex offender?

A No. I worked with the – with Deputy Baker with the Durham County Sheriff's Department, who is in the Sheriff's Department Sex Offender Registry Unit. And he had – if I – if memory serves, he had nothing, no violations or anything of that nature concerning Mr. Johnson and his registry status, sir.

Q Also on the Myspace account that you found that you have attributed to Mr. Johnson, you didn't find anything on there where he had tried to conceal information about himself; did you?

A All I can see was what was put on there, sir. So I – I mean, I can't speculate whether somebody's concealing by not putting information on the account. All I know is what I'm – what I see, which all I'm going to see is what somebody would put on their individual account.

And if we're talking Mr. Johnson, specific, I'm only going to see what he put on the account for me to – or for anyone to see.

Q And that something that anyone could see were his initials; right?

A C – the page was listed under CMJ, yes, sir.

Q Which was accurate; correct?

A Yes, sir. [23]

Q His height, which you've seen him in court?

A He's – he's a tall gentleman, yes, sir.

Q His race?

A Yes, sir.

Q His zodiac sign, which was accurate?

A Yes, sir.

Q Where he was from?

A Yes, sir.

Q Photographs of him?

A Yes, sir.

Q So there didn't appear, at least on the face of it, to be any deception as to who that belonged to.

A Didn't appear so, no, sir.

Q I'd like to change gears here and ask you some questions about your background and training. Have you had any training specifically on the statute that you've referenced, 14-202.5?

A No, sir. Other – other than – other than reading in the book, sir, meaning the general statutes book, sir.

Q Have you read any information that's been put out by the attorney general's office, the North Carolina Attorney General's office, on this statute?

A Not that I recall, no, sir.

Q Do you ever recall looking at something we, as [24] attorneys, call the crimes book or any type of reference manual giving information about this statute?

A Well, the – I'm – if I'm not – I'm not sure if the crimes book that I have sitting on my shelf has it listed, sir, because if I'm not mistaken, it is a fairly newer law once it was put into effect, sir.

Q After you started investigating, did you consult with anyone at the attorney general's office? Did you consult with anybody at the Durham police department's attorneys office or the sheriff's department attorneys office to seek guidance on how to interpret the statute?

A Attorney specific? No, sir.

Q Did you consult anybody on how to interpret the statute?

A Other than working with Deputy Baker with the sheriff's department, who instruct – and the guidance he provided me was that registered sex offenders are provided with periodic mailings that either need to be brought back into the office and signed in front of the deputy.

A couple of those mailings specifically acknowledged the fact what this law was about and this law was in place. And, in fact, they were to – to follow this law. Or, you know, this law was out there, [25] so they needed to be aware of it, which prohibited sex offenders from accessing certain websites, sir.

Q Do you know whether that notice to the registered sex offenders gave the specific names of any websites? Did the deputy tell you any about that?

A I don't believe it – I believe it just used the term "social networking" website. I don't think it gave specifics. I'm not sure if it gave specifics, using Facebook, Myspace, Twitter, Tagged, anything like that, sir.

Q As far as your investigation in this case, I understand how your interest developed. Why specifically did you choose Facebook and Myspace to search on?

A Those are the two most common ones that I've heard people referring to, sir.

Q And when you say "heard people referring to," who do you mean?

A People, just everyday life, sir. Not – not police specific. Just the fact that I'm 34 years old and I have adult conversations with other adults in and – you

know, outside of this line of work. So those are the – those are just the two that I'd pick, sir.

Q Were there any other websites that you considered or that you actually did examine?

A No, sir. Just those two, sir. [26]

Q You mentioned the website Twitter when you were listing through some –

A As an example, yes, sir.

Q As an example. Is Twitter a website that you would consider to fall within the statute, based on your review of the statute and common knowledge of Twitter?

A I have – and I have very little knowledge of Twitter. I've never been on the site. From what I understand, it's a status update site where people can just rant about what they're doing and what – and whatnot.

I don't know if you're allowed to post pictures. I don't know if you're allowed to make comments. I don't know if you're allowed to join groups and interact. I've never been on the website, sir. Or I've never been – accessed that group or organization, sir.

Q But at least in your thought process on what might fall within the statute, that was one that you listed, Facebook, Myspace and Twitter. Just sort of intuitively, is that one that you thought of?

A As far as the state definition of what a social networking website would be versus what I – if I used Twitter to associate with Myspace and/or Facebook, and it doesn't fall under the definition, it was unintentional. [27] I just – I just said that when I – what I was

understanding, sir. So like I said, if I'm misleading, it's unintentional.

Q And I'm not saying you're misleading.

A Yes, sir; yes, sir.

Q I'm just trying to –

A Oh, no, I'm just –

Q – understand the parameters of the law. As far as your investigation of this case, have you investigated – other than these seven individuals, did you conduct investigations of anybody else related to this statute?

A I'd found numerous matches of individuals that had Myspace and/or Facebook accounts that I did not pursue because the last shown accessing of that account, according to Myspace or Facebook when they put the dates out there, were prior to the – the law being enacted.

So I did not further investigate those because it appeared that once the law was enacted, they were following what – what the law was intended for, it appeared, sir.

Q And that leads me to my next question. As far as the statute is concerned itself, Mr. Johnson is charged by – I believe you were the officer that drafted the charges? [28]

A Yes, sir. Yes, sir.

Q He's charged with maintaining the Myspace account.

A Yes, sir.

Q Is it your understanding of that word, maintain, that it would require some affirmative act by a person to keep the website or the account active?

A My – when I charged Mr. Johnson, it appeared to me that when I saw the last action on the account, when the account was last accessed, being after that date, it doesn't tell me – I wasn't able to determine what that accessing was for.

I don't know whether it was to access it to post a comment, to look at a comment, to read a comment, to look at a picture, post a picture. All I know is that it was accessed February of 2010.

So based on that, maintaining to me was accessing that account. For what reason? Honestly, at the time, for what reason didn't matter to me. You weren't – read it the way I read it, a registered sex offender was not allowed to access those – those website – specific social networking websites.

Q I guess the reason I'm asking about the word maintaining is because you said there were people that had accounts you thought probably were created before [29] they registered, and then you could not determine that they had accessed it after the date of the statute's enactment; right?

A Correct.

Q I guess my question about maintaining is, if the registered sex offender allowed that website to continue in existence without actually removing it, weren't they in essence maintaining it?

And I guess – I guess the reason I'm asking is because it seems like the word maintain is different

than access. And maintaining means allowing to continue in operation.

But you're saying your understanding of maintaining would require some affirmative action as opposed to simply letting it exist.

A Well, in order to delete the website, I guess the person would have to access the website, which according to the North Carolina general – the way I read it, the North Carolina general – or the way I read it, the North Carolina general statute, that individual is not allowed to do.

Q And so if a person had an account before they registered as a sex offender, which they –

A Which at the time was not – or even –

Q – or even if they were registered – [30]

A – or even if they were registered prior –

A I'm sorry.

A Oh, I'm sorry.

THE COURT: The court reporter can only take one at a time, and I don't know who she's going to choose.

WITNESS: Yes, sir.

THE COURT: So as a result, make sure that you're not talking over one another.

WITNESS: Yes, Your Honor.

THE COURT: Thank you. So question, then answer.

DIRECT EXAMINATION RESUMED BY MR. GERDING:

Q I think we were in agreement, it could be either a registered sex offender who had an account before the law changed or someone that was not a registered sex offender and had an account.

And then what we were discussing was that if a person had such an account, the law changes, they're a registered sex offender, the only way for them to delete the account would be to access it is what you, I think, were saying.

A Yes, sir.

Q So if a person believed that he had to delete [31] that account in order to not be maintaining it because it was still in existence, then what you're saying is, the only way for him to not maintain it would be to access it to delete it.

A No. To not maintain it would be to not access it, which is why I didn't pursue any of the individuals that had not accessed their site after the law was enacted and it became – and it said after December 1st of this date, you are not allowed to access this account. You know, you're not allowed to access social networking websites.

Q So then your understanding of the statute would be if a registered sex offender has an account on Myspace or Facebook, let's say it's an account that he had set up before he ever registered. As long as he never logs into that account, the registered sex offender can keep that account on Myspace or Facebook.

A No, I didn't say – no. I just said I chose not to investigate those accounts. I was looking for the individuals that were accessing their accounts after the law became in – the law became the law, after it was

enacted. Those were the accounts that I chose to further investigate.

Q Then are you saying that that was just a matter of discretion on your part as to which to investigate? [32]

A Yes, sir.

Q Do you believe that you could have investigated and charged the ones who had the accounts prior to registering if they had not logged in?

A I believe that, had I charged them, I don't – I don't think it would have been right. Because if an individual has, I think that – honestly, I think the law is tricky on how those individuals can get rid of that account.

And I don't – I don't know that the law takes into account how to get rid of that account.

So in order for these individuals to try to get rid of it, they'd have to access it. And I don't think it's – I don't think it's fair for somebody to – for me to tell you, "Go on this website to get rid of your account. Oh, now that you went on that website, I'm going to charge you at the same time." I think it's a delicate situation, sir.

Q But you would agree, then, it is a delicate situation, as you put it, whereas a registered sex offender very well might have a Myspace or Facebook account created legally and lawfully before they became registered. They never access it after they register. And yet, that account could still exist.

In other words, a registered sex offender could [33] still have an account on those websites, so long as he doesn't access it.

A Well, I will tell you that there are several accounts within Myspace and/or Facebook for – that didn't – that appeared not to have been accessed prior to when the law was enacted, that I believe are – that were created by registered sex offenders in Durham County. There are right now.

But I did not investigate those pages because they don't appear to have been accessed after the law became enacted, sir.

Q I want to back up one second to your investigation of Mr. Johnson –

A Yes, sir.

Q – and the Myspace pages that you have attributed to him.

A Yes, sir. Or the –

Q At any point –

A The Myspace account?

Q Yes.

A With multiple pages within that account?

Q Yes.

A Yes, sir.

Q Myspace account with the multiple pages.

At any point, did you discuss with any [34] representative of Myspace the deletion or the closing of that account?

A Yes, sir. Specific that – that account? Or in general, both Myspace and Facebook?

Q I haven't heard you testify to be on Facebook.

A No, no, no, no. I'm just saying those two companies in general. Myspace has a policy that if they are aware that a registered sex offender in any state in the United States has an account, their policy is to delete it.

I did put in a preservation order for Mr. Johnson's account. They advised me that while they understood that the preservation order was signed, they were still going to delete the account, just based on the fact that he will – Mr. Johnson was a registered sex offender, and they had a policy not to allow registered sex offenders to have accounts on their site, sir.

Q And the preservation order that you submitted to the – to Myspace regarding Mr. Johnson, did that require that they preserve it on the Internet, or that they preserve the data so that it could be accessed at a later time?

A I believe they were going to preserve the data that could – so it could be obtained at a later point in time. But I believe they were going to delete the [35] information off of the Myspace site so that you could not go out to Myspace and access Mr. Johnson's account.

Q Your use of the word access leads me to my next questions. What is your understanding of what it would mean to access a website that is defined as a commercial social networking website?

A As in access, going on – you know, accessing the Internet, going onto Myspace and using a search function, logging in to your personal page to access other people's pages?

You know, I know with Facebook, you need to log in to your personal account. You can play, you know,

interactive games. You can join groups. You can "like" public figures. You can – you know, you can send messages back and forth. You can post comments about what you're doing. You can comment about other people's statuses, things of that nature, sir.

Q Is it your understanding of the term access, that it would require some type of logging in to an account?

A In order for Facebook, yes. Myspace, in order to do a people search, I did not have to. So I did not have to log in to – I didn't have to create a Myspace account or a Myspace page in order to access Mr. Johnson's or the information that was posted. [36]

All I had to do is access Myspace, the home page, use a people function, look under the – you know, when I found the page CMJ, click on the link to it, and it brought me to the main account page for Mr. Johnson, and I could see what information was posted there.

But I did not need to log in to Myspace. I could do that from – just from the Myspace home page.

Q And so your understanding of the definition of access would be simply typing into the Internet browser address bar the web address, www.myspace.com. That would be sufficient to constitute access.

A No. That's what I did, sir. That's what I did to access Mr. Johnson's page. If you're asking me what I consider to be access on Mr. Johnson's part, I don't know. That's not what I'm saying.

All I'm saying is for me to access Mr. Johnson's page, all I had to do was, in the Internet search bar, www.myspace.com. Myspace home page pulled up.

There's a search – a people search engine on it for individuals that had Myspace accounts, and that's what I used.

Q And so is it your understanding then of the term access, that had you been a registered sex offender – I know you're not – but had you been a registered sex offender and done those steps you just described, that [37] you would have violated the statute by accessing Myspace?

A I would need to clarify, because right now I'm – I'm not able to say with 100 percent accuracy, if the law uses an "and" or an "or" in there when it pertains to access and/or maintain. So I – you know, I'd have to – I'd have to clarify, sir.

MR. GERDING: May I approach the witness, Your Honor?

THE COURT: Yes.

Q Corporal, I'm handing you a copy of North Carolina General Statute, Section 14-202.5.

A Yes, sir.

Q I'll just hand that to you for your reference during my questions.

MR. GERDING: If the Court would permit the witness to continue to have that.

THE COURT: That's fine.

A Yes, sir.

Q And, Corporal, I would invite your attention to Subsection A, which creates an offense for a registered sex offender who accesses a commercial social networking website.

A Yes, sir.

Q And then the other parts about maintaining or creating are separated by the word "or." So in terms of [38] an offense, would you agree with me that accessing under the statute would be an offense?

A Yes, sir.

Q In addition to maintaining?

A Yes, sir.

Q So then going back to the steps you took when you were researching on Myspace, Mr. Johnson, do you believe that the steps you took constitute access under Section 202.5?

A I know it's a yes or no question, but it's a –

Q And I'm not – I'm not asking you –

A Yes, I'm not –

Q I'm not saying there is a right or wrong answer. I'm just asking for what your opinion is.

A I don't know, sir. And I guess I would say yes for as far as Myspace goes, yes, sir. Getting onto Myspace.com and using a search engine would be accessing Myspace, sir.

MR. GERDING: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

Q Corporal, I'm going to hand you a copy of page 138 of Defense Exhibit 1, and I'd ask you just to take a look at the – this page I've handed you.

A Yes, sir. [39]

Q Does it appear familiar to you?

A Yes, sir.

Q And what do you recognize Defense Exhibit 1, page 138, to be?

A It appears to be the home log-in page for Facebook.com, sir, or a screenshot of that, sir.

Q And is the address in the address bar www.facebook.com?

A Yes, sir.

Q And from your review of that, does that appear like what you have seen on Facebook yourself?

A Yes, sir.

Q I'd also like to hand you to look at Defense Exhibit 1, pages 145 and 146.

A Yes, sir.

Q What do those two pages appear to be?

A The first page, which would be 145, appears to be a[n] Internet search of Governor Bev Purdue with a Facebook account.

When this shot was taken, it appears that the individual was not logged in to Facebook in order to access this because it – there's a sign-up button right up in the middle.

And down in the lower right-hand corner of the page, there isn't a chats box, which I know from using [40] Facebook, you would get that box up in the – on the – in the lower right-hand corner.

Page 146 is a screenshot of the same Bev Purdue page on Facebook after somebody's account has been logged into. So using their Facebook account, this was page 140 – it appears, 146 is from, sir.

Q I would ask you, then, to also look at Defense Exhibit 1, pages 147 and 148 –

A Sir.

Q – which, just to speed things up, I'll ask you, does it appear to be a web page for the Mormon Church?

A For –

Q What –

A For LDS Church –

Q – LDS, Latter Day Saints, one page being not logged in to Facebook and the other page being logged in to Facebook, similar to the Bev Purdue websites?

A Yes, sir.

Q And then I'll also hand you Defense Exhibit 1, pages 149 and 150 and 150-1.

A Sir.

Q And, again, to speed this up, these are similar to the Bev Purdue, the LDS websites. Would it be fair to say this is a US Government Facebook page, with one being [41] logged in – well, the first being not logged in, the second being logged in, and then 150-1 not logged in?

A Similar to the others in those aspects, yes, sir.

Q All right.

A They're all in order. Thank you, sir.

Q Corporal, regarding the Facebook pages where a person – where these screenshots give information, for example, on Beverly Purdue, information on the Mormon Church, and information on the United States

government, for the Facebook pages where the person who took these screenshots is not logged in, would you consider that under the statute to be access – accessing Facebook?

A I don't know if – I guess I don't know if accessing a link on a search engine – example, Google or the Yahoo search engine – for Governor Purdue and accessing a link would constitute accessing – example Facebook.com. – by accessing that link to find out about Governor Purdue, as opposed to me going to Facebook.com and logging in and accessing the website to get to Governor Purdue's.

There are – you know, there are functions that I can do when I log in to Facebook on that Governor Purdue page that I can't do when I access – when I access a link on example Google. [42]

Yeah. I can't post comments on the page. I can't like the page. I can't send a message to the operator of said page.

Q But would it be fair to say that your understanding of Facebook, from your own use, from your investigation and from review of these web pages is that a person can find information on Facebook.com, using that address, Facebook.com, without having to log in to an account?

A I don't know that – I've never tried to access a page going to Facebook.com without logging in as opposed to going to a general Internet search, using a search engine similar to Google and typing it in.

Now, could a page, a public figure page, or a page that is maintained on Facebook, could it become

visible using that search engine similar to Google? Yes, sir.

But I don't know about going to Facebook, and without logging in to Facebook, could I access those pages, meaning I don't know that I could – I don't know if I could go to an Internet search bar, you know, pull up a computer and type in, example www.facebook.com\bevpurdue1003 – whatever the search bar or whatever the page is, sir.

MR. GERDING: If I may approach the [43]witness again, Judge?

THE COURT: Yes.

Q Corporal, I'm handing you again the screenshots from Bev Purdue, LDS and US government, and ask that you take a look at the address in the address bar between the logged in and the not logged in pages.

A Yes, sir.

Q They're identical; aren't they?

A Yes, sir.

Q So it appears, at least from these screenshots, that the web address could be typed into the address bar, and information on Bev Purdue, LDS and US government be reached on the Facebook website without having to log in?

A Appears? Yes, sir. I – I can't say that you can, I can't say that you can't. I've never tried that. And that's all I was trying to say earlier, I've never done that.

But – but the Internet or the web addresses on example Governor Purdue's page, appear to be the same, as well as the Mormon Church Facebook page or

the LDS Facebook page, as well as the US government page. The Internet address as listed on both pages are the same, sir.

Q And so in terms of your discussion about accessing these Facebook pages without logging in, you [44] were saying, well, if you found it through Google, for example, you did not know whether that would classify – or that would fall under the definition of access.

A I guess, are you asking – are you asking me access or are you asking me intent?

Q I'm just asking about the term access because the statute prohibits access.

A Right.

Q So what I'm essentially asking you, if Christian Johnson here was sitting at a computer, and you were looking over his shoulder, if he typed in www.facebook.com, and the web page came up for Facebook.com, do you believe that under the statute he has accessed Facebook?

A The main page or any subsequent page maintained within Facebook?

Q Facebook. We've been talking about Facebook.

A Right. Yes, sir. I – given the scenario you've given and – and after reviewing the documents provided by you, yes, sir.

Q So you believe that would be access under the statute?

A Yes, sir.

Q So then your understanding of the definition of access would not require a log-in in order to violate the [45] statute?

A No, sir.

Q Along those lines, you mentioned subpages or other pages within a website.

A Yes, sir.

Q Could you explain what you mean by that?

A As far as an individual account, sir?

Q As far as just an Internet website in general. You discussed the main page, and then I think you used the term subpages. What did you mean by main page and subpages?

A Using a person's account or one of the accounts that you just provided, sir? Meaning the screenshots you just provided me?

Q Using an account, let's say.

A Okay. When I – when I used the term subpages, I meant an individual when they create – it appears an individual when they create an account with Myspace, there is an option for them to include photographs. there's an option for them to included types of music, interests, likes, dislikes. They can have friends. They can chat with friends. Friends can post on their pages.

When that information got back to me from Myspace, they – Myspace called them folders. So there were different folders pertaining to chats or – [46]

So that's the subpages I was talking about was chats, likes, dislikes, friends, education, hobbies, all

things that you can elaborate on within our personal account for Myspace and/or Facebook.

Q And so backing up to the term access again, for your understanding and testimony just now about typing in Facebook.com or looking at any of the subpages, let's say that you're not logged in, but subpages of Facebook, your understanding of the statute and the term access would prohibit a registered sex offender even from looking at these screenshots I gave you where a person is not logged in?

A Yes, sir.

Q So then, let's take this concept of subpages and main page to a website called Google.com. Are you familiar with Google.com?

A Yes, sir.

Q As a search engine?

A Yes, sir.

Q But also as having multiple features that a person could use?

A Yes, sir.

Q Features such as email?

A I've never used Google, but if you say that you can access Google to get email, sir, I've – I've no [47] reason not to believe you.

Q Have you heard of [G]mail?

A Yes, sir.

Q And that's a[n] email function of Google.

A Okay. Didn't know that but do now, sir.

Q Let's say also that Google had a chat feature or a message board feature or a social networking feature.

Would your understanding then of the term access as you have understood with Facebook, would that prohibit a registered sex offender from going to Google.com main page?

A I don't know that Google.com would fit the definition as provided by the State of what a social networking website is.

Q Are you familiar with –

A Which would be – well, I'm sorry – which would be subsection B, still using the same sheet of paper that you provided with me earlier, sir, of what a[n] Internet or commercial social networking website and meets the following requirements.

Q Are you familiar with a feature of Google called ORKUT? That's O-R-K-U-T?

A No, I'm not, sir.

Q Would your understanding, then, of the term [48] access be that if Google.com had subpage that was comparable to Facebook, let's say Google has a function within it that is the functional equivalent of Facebook, but it's something that Google has created. And that that would be accessed, for example, at Google.com\facebook equivalent, whatever that address would be.

I think we could agree that accessing that subpage would violate the statute. Let's say it met the definition within the statute.

A So you're asking me, hypothetically speaking, sir?

Q Yes.

A All right. So you're saying if Google created a similar equivalent to Facebook or Myspace –

Q Yes.

A – and you had to access it through the Google main page? Or you just had to access it's – it's Google.com\make up a website here.

Q Yes.

A Okay. Would accessing make up a website here be in violation? If – if that site fell within what the State of North Carolina has deemed as a commercial networking – social networking website, then yes, sir.

Q So to back that up a step, how would you say, [49] then, that going to just Google.com would not also be the same as accessing that social networking website?

A Well, Google.com and Facebook.com are two different – you don't have to go to a search engine similar to Google to get to Facebook. You go to Facebook, and you go to the log-in page for Facebook, and that's where you intended to go.

But in order to get to the "make up your website" here, you would have to go to Google, and then make up your website here. But to go to Google just as a search engine, Google itself does not fall within the definition of a commercial social networking website, whereas in our hypothetical situation, make up your website here did. Fell into the definition of what the state says a commercial networking website is, sir.

Q So then your understanding would be that, for example, with Facebook, because essentially we all

agree that Facebook is a commercial social networking website, then accessing any web address with Facebook in it would violate the statute?

A Yes, sir.

Q But you're saying with Google, because Google itself may not be a social networking website, only a subset of that web address is, that you couldn't prohibit someone from being on the home page. [50]

A I don't – well, I can't prohibit them if it's – doesn't fall within what the state says is a prohibited place to go, sir.

Q I want to shift gears and ask you a few questions about some other terms in the statute, just for your understanding – from your understanding –

A Sure.

Q In looking at the statute, what is your understanding of the part of Subsection A that says that the sex offender has to know that the site permits minor children to become members or create or maintain a web page?

And, specifically, I'm asking you about the site permitting the minor children to do those things. What is your understanding of the site permitting that?

A What is my understanding that – that that face – that a site allows minors? I don't – can you rephrase it?

Q Sure. I guess what I'm asking you – I guess I should just ask you some examples.

A Okay, yes, sir.

Q For example, let's say the terms of use – and are you familiar with what terms of use might be for a website?

A Yes, sir.[51]

Q That would be what the website says people can do and not do on their website.

A Correct, sir.

Q So let's say the terms of use say that a person has to be thirteen and older to use the website.

A Yes, sir.

Q Do you agree that that website permits minors to use the website?

A Yes, sir.

Q What if the website terms of use said only someone eighteen and older could use the website? Would that, do you think, fall within what permits a minor to use the website?

A I would say that, while providing a date of birth to the website to verify age is going to be that company's way of stating that they only allow certain folks to access their site, I can't –

Can I say for sure that – that Facebook doesn't know or Myspace doesn't know that access? I can't say that because I'm not the folks that run their company.

MR. McCULLOUGH: Objection, Your Honor. Nonresponsive.

THE COURT: Overruled.

A But would – would there – yeah, terms of use. [52] By stating you must be eighteen years or older in

order to access this, would that mean that they are permitting minors to use the site? No, sir.

But, you know, like I said, anybody can say what they want when filling out their – their information to that.

But am I going to say that Facebook or Myspace or any social networking website allows minors to use it when, in their terms of use, it says eighteen or older? I can't say what they know or don't know.

Q And I guess those are my questions. For example, a website, Match.com – have you ever heard of that website?

A I've heard of it. I've never accessed it, but I've heard of it, so I don't know what – if you tell me what it's about, I'm –

Q It's a dating –

A – I'll agree with you.

Q It's a dating website that involves connecting people for whatever reasons.

A Yes, sir.

Q And let's say Match.com has a terms of use posted on the website that a person has to be eighteen or older to use the website. But their method of verifying the person's birth date is what the person puts in when [53] they register. It's sort of self regulation.

As you mentioned, you said something about people putting in birthdays. If that website actually has minors that are using it, because they put in false birth dates, is that website permitting minors to use it?

A I guess I don't know what types of checks and balances that website's going to have to – you know, to find out minors that are using their website or if they're – if they do know, if they allow it to use. I don't know.

You know, obviously, I don't work for that website or I don't work for any website. So I don't know what type of checks and balances they would have within their own company, sir.

I can't – obviously, you and I can't tell folks how to run their stuff. So shy of identifying through the visual inspection of state-issued ID cards or birth certificates, I don't know. And, obviously, that's not feasible.

Q I guess, just in terms of your role as an investigator, if you were investigating somebody for communicating with a minor on Match.com and trying to decide if this statute applied to Match.com, and you were looking at whether that website was permitting minors to use it, despite their terms of use, how would you proceed [54] in trying to determine whether they permitted minors to use it or not?

A How would I proceed if I – if I'm looking to see if they're allowing minors to use their site?

Oh, it's not – I guess it's not a violation of any criminal law that I'm aware of that they – you know, whether they allow minors to use their site or not.

I guess I know from – I've never used Match.com, but had I known and had I used Match.com, I might be familiar with, you know, different individuals using it.

Personal experience using Facebook.com, I know individuals, you know, under the age of thirteen that have a Facebook page. What information was

provided to Facebook, I don't know, but I know that there are minors on Facebook.

But on Match.com, I don't – I don't know how – I mean, other than trying to find identifying information about the individual and speaking with that – a specific individual, as far as age goes. Other than that, I don't know how to verify, sir.

Q Okay. Then let me – let me ask you this. Maybe with some concrete facts. Let's say Christian Johnson wanted to use Match.com to meet friends. And he saw that the user – terms of use said that a person had [55] to be eighteen or older.

So he sees that minors are not supposed to use the website. He logs in, starts looking at profiles of other users, and he finds someone who is saying, "I'm a 16-year-old. I'm using this Match.com to meet older men," for example.

At that point, do you think that Mr. Johnson or anyone in the situation would have been justified in relying on the terms of use to determine whether that website permitted minors to use it?

Or once he saw that a minor or others were using it, at that point he would need to get off the website and not access it again because he had determined that it was permitting minors, despite the fact there was a user agreement that said not to.

A Excuse me for a second. Let me think about this response for a minute.

If – if we're using Match.com as an example, and just for hypothetical we're saying that it falls within the definition of what the state says is a commercial social networking website, I guess the – I

guess – and you had mentioned it earlier – the term is going to be knows or no – you know, knowingly, it knows that a site allows minors to be -- to be members.

I guess it's when that – you know, it's when [56] the individual knows that a minor is a member of that site that that then becomes a violation, using your – your scenario, that it becomes a violation of the law.

The example you used was Mr. Johnson accessing Match.com at the – you're alleging that at the time he accessed it, he didn't know that minors were members.

Well, once he knows that minors were members, you said, I guess my reading of it, that's when it becomes a violation, when they know that minors are accessing the website and they have – they have pages or accounts on that site, sir.

Well, it – that's how I would – that's how I would interpret the scenario you laid out for me, sir.

Q All right. Thank you.

A. Yes, sir.

Q Moving on to another part of the statute, Subsection (b)(1). In terms of your investigation of Facebook and Myspace to determine whether they fit within the statutory definition of commercial social networking website, what steps did you take to determine whether Subsection (b)(1) was satisfied for purposes of Facebook and Myspace?

A When I went, memory serves me, looking through the different information provided by Myspace and Facebook about what – you know, the general, what they [57] do, where they're at, I know Facebook had a clause in there that they advertised – they posted advertisements.

You were subject to getting different pop-ups on the – on the side of your page, based on, you know, information you put out there so that they could best, you know, cater advertisers to you in the things that you would be interested in.

Q Would it be fair to say that what –

A Sir.

Q – you did was look to see, number one, if they had advertisements posted on the website and, number two, also looked at any terms of use or membership agreements and things that discussed whether advertising was a possibility?

A I did, sir. Yes, sir.

Q And those are what satisfied you in your mind that Facebook and Myspace derived revenue from advertising?

A Yes, sir.

Q It wasn't something where you called the companies and said, "Hey, do you guys advertise? Send me your budget or your balance sheet to show that you use these websites to make money," did you?

A No, sir. The only interaction I had with either Myspace and/or Facebook was with their law [58] enforcement assistance teams when I was serving – or the subpoena compliance teams when I was serving the appropriate processes on them, sir.

Q So then, in looking at other websites to determine if they were commercial social networking websites under this definition, would it be fair to say, as an investigator, that's what you would look for,

circumstantial evidence such as posted advertisements or something in the terms of use?

A That – those could be areas that I could look at, yes, sir.

Q Okay. I wanted to ask you then about Subsection (b)(2).

A Yes, sir.

Q In terms of trying to determine if a website meets the definition of a commercial social networking website, what would you believe would be characteristics of that website to show that it facilitated a social introduction between people?

A What would I be looking for?

Q Yes.

A Specific to those – to Myspace and/or Facebook, because those are the two that I looked at?

Q Any website that you would consider investigating as to whether somebody had accessed it or [59] maintained on it to see if it fits within this definition.

A I guess examples that I looked for when – when reviewing the accounts on Myspace and/or Facebook, pages that could be liked, groups that could be joined of – of persons of the same interest, whether that was employment, education, extracurricular, music groups, the ability to, you know, talk or converse electronically, email back and forth with different individuals on – in those groups or units.

Those were – those were some of the major things that I looked for, like I said, when looking through those two websites, specific, sir, Myspace and Facebook.

Q And in your response, you mentioned some specific aspects of websites that people could use, the groups, email, messaging, those type of things.

A Yes, sir.

Q What I didn't hear from you was that you would look towards what the subject matter was. So, for example, you said groups that – or pages that could be about employment or hobbies or things like that.

A Well, like interests, yes, sir.

Q Like interests. But you weren't specifically looking to see whether it was things about social [60] discussions, so discussing parties or discussing going to events or things like that.

It could have been employment or finances or sports teams. Is that fair to say?

A I know from personal experience using Facebook, as an example, that attending functions or talking about an upcoming function might not be viewable to the outside public unless you are specifically invited to that function, meaning there is a get-together tomorrow night at 123 East Main Street. And if I wasn't invited by a member of that party or group, I might not see that event.

But as far as Facebook goes, I do know that they – I can "like" 123 East Main Street, as an example, and I might see other individuals that "like" 123 East Main Street. And we can comment about why we like 123 East Main Street. We like it because of the food, whatever. You know, whatever we like about 123 East Main Street.

We can post pictures about 123 East Main Street or previous experiences there. We can post

pictures about anything, and just tag it as 123 East Main Street, as an example.

Q I guess the reason I'm asking the question, and this might help clarify your response – [61]

A Yes, sir.

Q – at the last hearing, the State seemed to argue that a number of the websites that I had proffered to the Court did not facilitate the social introduction between people because they involved things like discussions about medical procedures or things like medicine or health.

The website, MedHealth.org, for example, is one that I proffered. And I think the State's contention was that that wasn't social introduction, mainly because of the topic.

What I'm hearing from you is it's more about the functions of the website as opposed to topic. Is that fair to say?

A Yes, sir. Based on one – you know, obviously, our question-and-answer session so far; yes, sir.

Q Regarding Subsection (b)(3) –

A Yes, sir.

Q – as far as defining what a commercial social networking website is, is it your understanding of that subsection that all of those functions would have to be present or simply some of those?

And what I'm referring to is it says, "Allows users to create web pages, personal profiles that contain information, such as the name or nickname of the user, [62] photographs, other personal information, links to personal web pages."

And so I guess what I'm asking, is it your understanding of that subsection that the website has to permit all of those – name, nickname – name or nickname, photographs, personal information and links to web pages? Or is it your reading of the statute that when it says "such as," that's a list of things that could be considered information?

A I guess I don't see the word – the only time I see the word "and" in Subsection 3, under A, Offense, is, "Links to other personal web pages on the commercial social networking website of friends or associates of user that may be accessed."

Otherwise, I don't see the word "and" where it says – where it specifically says that it must have this and this and this. I don't interpret the comma as an "and," sir.

So I would say that, because I don't see the word "and," I'm not going to interpret the comma as an "and," that it must have all those in order to satisfy the definition, sir.

Q So mainly what you would look at would be whether the personal profile contained information about the person. And then this gives you some examples of [63] what it could be?

A It contains information such as name, pictures, other personal information, links to other pages.

Q And I would ask you then to look at Subsection (b)(4) to compare that, and ask if you believe that also to be similar, where the website doesn't have to have a message board, a chat room, electronic mail and instant messenger, but it does have to have mechanisms to communicate, and those are some examples.

A And those were – those appear to be, how I read it, examples, such as, and those are the examples provided, sir.

Q I have a few more very specific questions. Do you have any opinion on whether this statute would apply to accessing Facebook or Myspace through a cell phone?

A In my opinion, the medium in which you access the website doesn't matter. The accessing of the site is what's the violation. So whether you access it through a cell phone, whether you access it through a computer, you're accessing the site.

To me, it's still a violation, whether you access it through the cell phone, an app or an application on your cell phone versus accessing it through a computer, sir.

Q Do you think it would be accessing under the [64] statute if the cell phone somehow can take your contact information from Facebook or Myspace provided to you on the phone so that you could call people or look at their address?

A I don't know. Like, an example, like a – like a Android or a Blackberry –

Q Yes.

A – syncing up with –

I guess I don't know how the technology links your phone with a profile page without you applying some information about yourself on your profile page.

Example, I know on my Blackberry phone, I can get pictures from Facebook of friends because I have included my cell phone number on my personal page.

But as far as it linking up without providing information to that website, I don't know how the technology works in order for it to do that, sir.

Q And I guess the best hypothetical to ask about would be going back to the person who had a my -- had a Facebook page before they were convicted as a sex offender, they were convicted as a registered sex offender, they don't ever go back on the computer to do anything on that Facebook page, but they still have their cell phone which draws data from that for the pictures or the phone numbers. [65]

Would it be your opinion, then, that that would be accessing that Facebook page for purposes of this statute?

A But are you – I guess, to elaborate on your hypothetical question – your hypothetical situation, but are you accessing the site, or are you accessing a contact on your phone in order to call, and your phone brings up a picture but it doesn't bring up the Internet site?

You know, it doesn't bring up that person's page; it just – you just find the person you're looking for, you hit send, and a picture is on your phone.

I don't know if that's accessing the site or if that's accessing a contact on your phone, you know, through the memory card on your phone.

Q Well, let's say it does actually connect through the Internet to Facebook to draw that name, so that if a friend that you had on Facebook before you were a registered sex offender changes their picture on Facebook, now you're a registered sex offender, you're using your phone, and it draws that new picture from

Facebook.com, then is that considered access of that website through your phone to use those functions?

A I guess my most honest answer is I don't believe I have a – enough of a legal background to make [66] a determination of whether that's accessing it or not, sir.

All I can offer you is that I – I don't even know that I could offer you a good opinion as to the answer to that question, sir.

Q So to put it in perspective as far as you being an investigator, I know you're not with that unit anymore, but –

A Yes, sir.

Q – let's say you still were, and you arrested Mr. Johnson for some unrelated offense, you had his cell phone, and you were doing a search of it properly with a search warrant. Let's say you suspected him of being involved in some other activity.

A Yes, sir.

Q And you saw that his phone had been getting data from Facebook for these pictures of his contacts. Would you at that point consider that as something to investigate as far as him accessing Facebook?

A I guess I would have to contact the social networking website to see if, through their means, you know, their technology, if they were able to determine what type of access, if there was access to the site, or whether it was an information pull, as you were talking about earlier as far as just pictures. [67]

And I don't know if you can clarify one versus the other, you know, whether it's an intentional going

to via the application button on your phone versus the data pull of a picture.

I don't know if you – if you can determine which one is which. I don't know if you can differentiate between the two.

I know that I don't have near enough the computer sense and – to go about that. I would have to ask folks that know a lot more about computers than I do to see if that can be determined, sir.

Q As far as your decisions in charging, in this case or any of the other cases, or just any case under the statute in general, how did you make your charging decision as far as the number of charges to bring against any of the individuals?

A I only – each individual is only charged with one count of violation of this general statute. I didn't choose to go back and look at every time an IP address was used and each time the individual's account was accessed to – for lack of a better term – stack charges, and end quote.

I felt that the one charge per person for accessing and/or main – and/or maintaining that personal account page or personal account within that company or [68] my – you know, Myspace and/or Facebook, in my opinion, was sufficient to basically end my investigation, sir.

I felt that it – I felt that was reasonable.

Q And I appreciate that.

A Yes, sir.

Q However, as far as what you could have charged, did you feel that it was within your abilities as

a law enforcement officer to charge each and every time that a person may have logged in to the account?

A Based on the – based on the wording in the definition, because it says "access," and then later on it says "or maintain," I believe it – it could have been permissible to charge for each time the individual account was accessed. Yes, sir.

Q As far as maintaining goes, do you think that you could charge an individual for each page that is maintained?

So, for example, I think with Mr. Johnson's case, you have a home page, a page with some photographs, a page with might have been blogs or videos, maybe four or five is what you provided in discovery.

A I don't think that – I don't believe they were – I think you had to have the main account page before you could have any of those subfolders or those subpages.

I don't think you can have just a subpage without the [69] main page for an individual person's account.

So I think, to maintain the main page, you maintain all the subsequent subfolders. I believe it's all – it's all connected to the one main page, sir.

Q So in your opinion, it would be maintaining a presence or maintaining, I think it says personal web pages, would be a single offense as opposed, for example, a hundred different offenses if they had a hundred different page – subpages of their home page.

A I don't – well, I wouldn't – me, personally, I wouldn't have charged Mr. Johnson for having a folder with pictures in it, and then having a folder with his

education background in it, and then having a folder with personal messages where he'd been going back and forth.

All of – all of that together to me was maintaining a – the profile page, CMJ, on Myspace.com.

Q And had he had a separate account, let's say, that was Christian Johnson, not CMJ, do you feel that would have justified two separate charges?

A So there was CMJ and then there was also Christian Johnson?

Q Yes. Same person, same information, just maybe different –

A Two different –

Q – identifiers. [70]

A Two different member ID numbers?

Q Yes.

A Which would have been up at the top in the – in the Internet access bar?

Q Yes.

A Yes, sir. I do believe that would have been two separate charges had it been in Mr. Johnson's case.

And as far as my overall investigation, that was the case, because I did have somebody that had two different Facebook pages, and I charged – I charged – I did charge him twice, once with page number 1 and then page number 2.

Q Because those were separate –

A Because they were separate, had separate IDs, they were accessed different times, they were started at different times.

Q And I think I have one or two more questions.

A Yes, sir.

Q As far as the statute goes and as far as charging a registered sex offender under the statute, do you believe a registered sex offender could be charged under this statute if he has another person posting information on a web page that he had created prior to being a registered sex offender?

A I don't know that I have the – again, I'm [71] going to have to say I don't know that I can argue the legality of if I – example, because we've been using examples a lot — I'll be the registered sex offender. If I ask you, "Hey, will you put this information on my page?" I don't know what – I don't know if that equals maintaining or not, because I'm asking you to do something on a page that I know I can't have.

Personally, I would have to – I would have to seek guidance from, say, the District Attorney's office on whether they feel that that was appropriate.

I'd have to ask folks with a little bit more legal background than – than I possess at this point in time to accurately answer that question, given those specific set of facts in our hypothetical situation, sir.

Q And the last question area that I have, and this is going back to the questions related to home pages and subpages of a website.

A Yes, sir.

Q In Subsection B of the statute, it talks about a commercial social networking website is an Internet website. And it uses that phrase, Internet website.

Is your understanding of Internet website that it is a[n] address that's typed into the address bar and any subpages, or is it just the subpages themselves?

A Can you ask it one more time? You can ask it [72] the exact same way. I under – I think I understand it. I just want to hear it again.

Q My question is, regarding Internet website in Subsection B, does that refer to the address that's typed into the web address bar on the browser and any subpages, or does it apply only to the subpages?

A So the fact that I go to open up a – open up the Internet on my computer using the icon on the desktop, the fact that I type in www.myspace.com or Facebook.com, typing that in?

Or are you asking me if I – once I get into Facebook or Myspace and using all the subsequent pages, or the Governor Purdue's website like you showed earlier?

I guess I would – I would, I guess, contend that the fact that I opened up the Internet browser and typed in a – the address into the Internet address bar that I have accessed the Internet, and now I am accessing an Internet website once I've accessed – once I'm utilizing that address bar on – on the Internet browser, sir.

Did – did that answer your question?

Q It did.

A Okay.

Q That's exactly what I was asking.

And then, I think I've already said it was my [73] last question, but I do have another last question.

When the statute uses the term "minor," what age do you believe that term "minor" means, and why?

A Well, obviously, I know, as a Durham police officer, as far as an individual that has committed an offense, I know the State says sixteen or older you can be charged as an adult.

I also know that, as a Durham Police Department officer, if you are under the age of eighteen and an offense was committed on you, we considered you a minor; meaning if you were seventeen and somebody assaulted you, my unit would look at it.

So that's where my basis came – you know, that's where my basis come from as minors. So I said, my belief is under the age of eighteen.

Q But you're not aware of any definition that you've relied on from anything specific –

A Not as far as this investigation goes, I did not specifically look up the term "minor" and determine what the State – if the State has set out a definition. I did not do that, no, sir.

MR. GERDING: At this point, Judge, I don't think I have any other questions. Thank you.

THE COURT: We'll take a break. It is 12:09. We'll take a break until 12:25, Mr. Bailiff.

* * *

[74:3]

THE COURT: Questions from counsel for Defendant Johnson have completed questioning. Now at this time, counsel for Defendant Packingham, Ms. Norton-Ramirez, may ask her questions.

MS. NORTON-RAMIREZ: Thank you, Your Honor.

CROSS-EXAMINATION OF OFFICER SCHNEE CONDUCTED BY MS. NORTON-RAMIREZ:

Q Good morning, corporal.

A Yes, ma'am.

Q With regard to Mr. Packingham, could you explain the situation by which Mr. Packingham came to be arrested?

A Yes, ma'am. While searching Facebook.com, I found a Lester Pack – a profile account for a Lester Packingham. Looking at the photograph that is associated – that was associated with that page, it did not appear to be the same individual that I could see on the Department of Justice website as Lester Packingham, the registered sex offender.

There was some, I guess, biographical information associated with the profile page, Lester Packingham, things like high school attended, Hillside [75] High School. I believe the date was 1974. North Carolina Central University, 1978.

I know that both of those educational institutions are here in Durham. I knew that the registered offender was a junior, so it – it was – I assumed that it was possibly related.

On the, I guess, main page, for lack of a better term, the main profile page for Lester Packingham,

there was a recent – there was a list of recent activity to include new associates or new friends on Facebook, one of which was – that I could see was a J. R. Gerard.

I know that the individual that I was looking for was Lester Gerard Packingham, Junior. So using the – looking at the J. R. Gerard profile page, the associated picture for J. R. Gerard appeared to be Les – to me, Lester Packingham, Junior.

One of the comments posted on the profile page for J. R. Gerard was from J. R. Gerard on or about April 27th, so the posting was something similar to – these weren't the exact words, but it was, "God is good. I got so much favor that they dismissed the ticket before court even started. No fine, no court costs, no nothing. And God is great." Something along those lines.

I was able to go to the clerk's office, the Durham County Clerk's Office, and find a citation that [76] was written for or issued to Lester Packingham, Junior, the court date being April 27th.

And I was able to obtain a dismissal order where the citation had been dismissed. I think it was a failure to – failure to notify DMV of change of address, along with another charge, but they had been dismissed.

Based on the posting on the page, in conjunction with the dismissed citation and the picture being similar, or being – it appeared to be the same – the person that I was looking for, I obtained a search warrant signed by a Superior Court judge for Facebook to get the identifying information and any information provided for that individual Facebook account for J. R. Gerard, ma'am.

Q Now, the Lester Packingham page listed J. R. Gerard as a friend, and there was a J. R. Gerard page which was the page that – for the account that we're talking about with regard to the post.

A The account, J. R. Gerard, that I found on Lester Packingham's page, I am contending that Lester Packingham, Junior, was maintaining the Facebook page, J.R. Gerard. Yes, ma'am. I'm sorry.

Q And the Lester Packingham page was Lester Packingham, Senior?

A I – it appears to me that it was for Senior, [77] yes, ma'am.

Q Based upon the college, graduating in 1978 and a picture of an older gentleman as the profile?

A That – that's what I believed at the time, yes, ma'am.

Q And when you came – then you swore out – you got a search warrant for Mr. Packingham's computer?

A No, ma'am. Then I – then I obtained a search warrant for Facebook, which I then sent to California, which is where Facebook's compliance team is located, ma'am.

Q Okay. So your source of evidence is the information given to you by Facebook with regard to the J. R. Gerard account?

A Well, the – my initial source of information was what I uncovered through my Internet search, using Facebook, using my computer, ma'am.

Q Okay. But you don't have Mr. Packingham's computer.

A Yes, ma'am.

Q You –

A The – I – I mean, subsequent – I mean, the investigation continued once – you know, once I sent the search warrant to Facebook.

Once I got that information back, a search [78] warrant – arrest warrant – and a[n] arrest warrant was obtained, and a search warrant was applied for for the residence of Mr. Packingham subsequent to the search pursuant – or pursuant to that search warrant when it was executed, a computer was seized from the residence. Yes, ma'am.

Q And did you go on the computer to see if there was any history with regard to logging in to this Facebook account?

A Not as of now, no, ma'am.

Q Okay. Now, the profile for J. R. Gerard, Mr. – or Mr. Packingham, I think you said earlier that, basically, anybody can say what they want when filling out this –

I could go on Facebook and say that I was you; couldn't I? And open a Facebook page for you. And I don't even have to put your picture, or I could get your picture and put in all this information, and it would – how would it be visible to you that I had done you and you hadn't done it?

I mean, just to the common person looking there.

A So is the question, could you do it? Or could the –

Q Right. [79]

A – question, how would I, as a law enforcement officer, know?

Q No. Could I do it?

A I – yes, ma'am.

Q And so I could set up a Facebook page for a registered sex offender without them ever even knowing it?

A Hypothetically speaking, yes, ma'am.

Q And if I lived in a – and if I shared a computer with somebody, the computer just is going to show an entry to Facebook on the log history, but there would never be any kind of indication that a certain person was actually accessing the Facebook account; correct?

A You and I share a computer –

Q Right.

A Using me as the registered sex offender, you could access using our shared –

(Knocking at the jury room door at this time.)

THE COURT: Hold on.

WITNESS: Yes. Yes, Your Honor.

THE COURT: Since there has been a knock on the door in a jury trial unrelated to this matter, Mr. Witness, if you'll please just remember where you were in about – that statement to be made, I'll need to recess [80] this matter so I can address the jury case.

* * *

[80:7]

THE COURT: We will resume at this time. As we took the recess for lunch, the witness was in the course of rendering testimony on cross-examination.

I'll remind you, sir, that you are still under oath.

WITNESS: Yes, Your Honor.

THE COURT: If you recall the answer that was interrupted that you were giving, you may resume it at this time. If you don't recall it or otherwise counsel needs to re-engage you, I'll turn it back over to counsel. Do you know where you were, sir, in your answer?

WITNESS: If at all possible, I'd like her to ask the question again, Your Honor.

MS. NORTON-RAMIREZ: That's okay. I think I'll just kind of move on since I want to stick to the statute and, specifically, Mr. Packingham's web page.

May I approach, Your Honor?

THE COURT: Yes. [81]

CROSS-EXAMINATION RESUMED BY MS. NORTON-RAMIREZ:

Q Do you recognize this photograph?

A I do, ma'am.

4 Q And what is that?

A This is the photograph that was attached as the displayed picture for the Facebook page, J. R. Gerard.

Q His profile – his profile picture.

A This would have been the profile picture associate with that page, yes, ma'am.

Q And, you know, it's regard – did you note that Mr. Packingham's profile picture refers to Christian Clothing and Accessories?

A I can see where it – it shows on this picture, and it did on the Facebook page, as well. Yes, ma'am, on the picture.

Q And he refers in his Facebook to the business called The Buckle. Do you recall that?

A I don't, not off the top of my head, no, ma'am.

MS. NORTON-RAMIREZ: May I approach, Your Honor?

THE COURT: Yes.

Q I just want to show you some of the –

MS. NORTON-RAMIREZ: This is attached to the motion, Your Honor, my motion. It's the page with the profile picture, that looks like this. This is Mr. [82] Packingham – it's at the end of my motion.

Q This is the profile picture. It says J. R. Gerard, and then kind of a signature. It says Christian Apparel and Accessories, "I can transform ya." www.j.r.Gerard.com.

And then, do you see where he refers to a business called The Buckle?

A I do, yes, ma'am, on or about April 24th, according to the posting.

Q And that is a business that he runs with regard to selling the Christian apparel?

A I have absolutely no idea what The Buckle is and what it refers to.

Q He refers to Buckle clothing.

A I mean, I can read the posting, but I don't know if that's what – you – you are stating that I know that –

Q Right.

A – The Buckle sells Christian apparel and clothing. I don't know that.

Q Do you know that – whether he used his web page to advertise for his business?

A I don't know. I didn't know The Buckle was a business. I didn't follow – when reviewing this page, I didn't follow up on The Buckle. [83]

Q Did you – from the web page, from the photograph, were you able to determine that he sold Christian apparel and accessories?

A I can see where it says Christian and apparel and accessories. I don't – and I didn't follow up to see if that's what he'd used his Facebook page for. I can see on the picture that it says that, but I didn't put two and two together to say that, because it says that on there, this is what he's using it for.

Q I have a question specific – you have this document still up there; right?

A I do, as provided by the other counsel, yes, ma'am.

Q I have a question for you with regard to the exception which deals with business situations. The exception to this statute is under the Subsection C2. Says, "has as its primary purpose the facilitation of commercial transactions involving goods or services between its members or visitors."

Are you –

A I – I'm reading. Yes, ma'am. I'm – I see what you're referring to, yes, ma'am. I'm sorry.

Q If Mr. – what is, in your opinion, the word "primary" – what does that mean?

A You're asking my definition of primary? [84]

Q Well, you know, as – as the one who, you know, is, you know, making arrests on cases where there's an exception for somebody who has a – the primary purpose of the Facebook page is to facilitate commercial transactions.

A I don't – well, the way I see it is it doesn't – it's not specifically talking about the individual person's page. It's talking about the commercial website itself. A commercial social networking website does not include an Internet website that either – and then you go into Subsection 2 – has as its primary purpose.

That's – to me, I see that as being the social networking website, not the individual page or individual account that has been created by someone on that social networking website.

Q Okay. So is it your interpretation that if I was to have a Facebook web page, and all I did was advertise my business, I didn't post any personal information, no likes, dislikes, I was just selling products. Would that be out – within the statute or outside of the statute? Because I'm doing it on Facebook.

A I would say that it falls in, because Facebook itself falls in – by how I – the definition provided that it fall – to me, it falls under – Facebook falls [85] underneath the social networking website.

Q Okay. So I don't want to seem redundant; I'm just trying to understand. So if something is a commercial social networking website, it is going to be within the scope of the statute, whether or not it is geared to business as its primary purpose or whether it's geared to social activity as its primary purpose. Is that correct?

A No. It's the individual – I thought – what I thought your initial question was about an individual page or account on Facebook, and now you're saying Facebook as a whole.

Q No, I just – you're right. I'm sorry.

A So I – I –

Q I didn't characterize it well. I open a page on Facebook, and I'm just advertising my business.

A Okay. But Facebook – but Facebook itself falls – I'm sorry, I didn't mean to cut you off.

Q Right.

A I apologize.

Q No, you're right. So you're saying that anything on Facebook, if it's just social or just business or a combination of the two, is all going to be within the scope of the statute because it's on Facebook. Is that your interpretation? [86]

A So that it – well, I guess it doesn't fall under what my – I – how I interpret the exceptions. It doesn't fall under the exception because its primary purpose – because individual pages primary purpose – so I say Facebook falls under the – like I said, I think Facebook, per the definition provided on – on Subsection A – or B, I'm sorry, that Facebook falls underneath those.

Q Okay. So once it's deemed a commercial social networking website, even if the person who's accessing it or maintaining it is not using it for social networking, it would be within the scope of the law?

A It's – I guess I interpreted it, it's the – it's not what the primary purpose of the user is. It's the primary purpose of what the website is.

Q Oh, yeah. I mean, it's – the statute –

A So whether or not the user's primary purpose is to use it for financial gains, I read it as it's the primary purpose of the website, regardless of what the intended use of the – of the user is, whether they're going to use it for personal or for business.

Q Now, earlier, I – you were so kind as to let me look at the website of this British organization that is in Defense Exhibit 2, A-S-O-S, a store from Britain that has a Facebook presence. Correct? [87]

A Yes, ma'am, we did that at the table, yes, ma'am.

Q And that was a website – the business exists on the Internet and exists on Facebook, and the function of this ASOS is to sell clothes and to let people talk about fashion and share their opinions; correct?

A It – it appeared so. I mean, that's – this morning was the first time that I'd seen it, so I have, obviously, a very limited knowledge. But I mean, that's what it appeared to be when you and I looked at it. Yes, ma'am.

Q Okay. So if I'm a sex offender running ASOS, is that within the scope of the statute or the exception?

A Well, I guess it would depend on what ASOS, the A-S-O-S, what their primary function is. If their primary function is the facilitation of a commercial transaction, then per the – per what the exception states, then it wouldn't be, if that was the primary function.

Q But it's the ASOS presence on Facebook. We looked specifically at the Facebook page of ASOS, and you could buy clothes right off their Facebook page.

A We could, but we also didn't – we also didn't look to see if there was anywhere else you could access it through ASOS's website, if they have a website all by [88] themself.

Q No, it –

A We specifically looked at Facebook.

Q No. Assume they have a website, but we're not talking about it. We're only talking about the fact that for ASOS, they have a Facebook page that permits them to sell their goods. Are they within the exception?

A You would have to – again, I think we have to access Facebook to get there, and I would say no, because they are – you are accessing Facebook to get there, as opposed to going straight to the company on an alternate – by alternate means.

Q Okay. So your interpretation of the exception, which is, "has as its primary purpose the facilitation of commercial transactions," means that if it's a commercial social networking website that – such as Facebook, it'll never fall within that exception.

A I don't think Facebook falls under the exception because I don't think Facebook's primary purpose is the facilitation of commercial transactions.

ASOS's primary function might be to commercial – you know, facilitate commercial transactions, because obviously they want to make money. But the – and it – and that can be done through alternate means, not – by not accessing Facebook to get there. [89]

I'm – I would imagine. I don't know. I'm – again, first I saw it was this morning.

Q But one of the – you know, the captions for ASOS was, "Discover fashion, share with your friend, post your opinion, all on the ASOS Facebook shop." Do you remember that?

A Yes, ma'am.

Q So the ASOS Facebook shop permitted exchange of opinions, but also, really, the shop is geared to selling their stuff.

A Yes, ma'am.

Q Did you get that impression? Its primary purpose is to sell their clothes.

A That's the impression I got this morning, yes, ma'am.

Q Okay. But because it's done under the rubric of Facebook, it would be within the statute and not within that exception?

A That's how I would view it, yes, ma'am, by accessing it through Facebook.

Q You know, I wanted to just ask about a couple of the other terms that were confusing to me. For the – the first ones were accessing the commercial network. I know Mr. Gerding talked about this quite a bit.

And you said that you had charged the [90] Defendants per Facebook account. But is there any guidance, or is it completely discretionary for every single time someone signed onto Facebook for that to be a new offense?

A If there is guidance out there, I'm not aware of it. I'm going to use the I don't know. If there's guidance out there, I haven't seen it. I'm not aware of it.

As far as is it an individual charge each time? How I interpret it, each time they access it, I – I would say yes, it could be considered a separate charge.

Is that discretion or is that how I interpret it? I – I don't – I don't know.

Q And the same subsection talks about whether the sex offender knows that the site permits minor children. So there's – is the knowledge requirement, is that fulfilled only if there's a specific term of use statement that says that anyone under a certain age or over a certain age can participate? Or how does someone know that the site permits minor children?

A I guess I wouldn't – I guess I would need to refer – I don't – I don't know what previous court rulings as far as the word "knows" – I'd – I hate to use the term – you can't – that's just it. I don't know how the – how the – you can define "knows" or what [91] has been previously described as "knows," whether it's postings that are out there, what you see, what the general public sees, the terms of use. I would argue that all of those could be used to help define the "knows."

Q Well, like Glenn found this website, bettycrocker.com, which I thought was interesting. He can set up a profile, just like Facebook, and have a

photo and put out your thoughts about anything, really, even though they mostly talk about cooking.

A Yes, ma'am.

Q Now, I don't know what Betty Crocker's terms of use are, but I can't – you know, just hypothetically, if they don't say how old you have to be to be on this web page, and I'm a sex offender, how do I know whether I can go on that website?

A Well, what is – I guess if you're – if you're knowledgeable in what you can and can't do as – as the law states, and you've got a copy of this, I guess – what's the primary intent of your example, Betty Crocker?

Is Betty Crocker's website's primary intent to facilitate people talking about recipes or changing – exchanging recipes, or is Betty Crocker's primary intent to get you to buy their cake mixes, their brownie mixes, their baking products? What's primary Crocker's primary [92] intent?

Q But assuming bettycrocker.com fulfills all the requirements because they have ads, you know, from cooking companies, etcetera, for you to be able to buy their – but, you know, cooking related products.

But there's nothing in the terms of use or nothing that says you have to be a certain age to set up a profile and interact at bettycrocker.com.

And I'm a sex offender. How would I know whether I can go on this?

A I guess the non – either the – my nonofficial answer, I guess, could be if – if you don't know, don't do it.

Obviously, that's what I would tell folks out on the street. If you have a question about whether you can or can't do something, don't do it. The best way for them – for somebody not to get in trouble is to not do something.

Sitting up here and to answer your question, if – if you have questions, there are sheriff's deputies that are knowledgeable that – you know, registered sex offenders are required to ask questions of.

And if they don't know an answer, they can follow up on who can answer that question, as opposed to going in blindly just, "Well, I didn't know." [93]

And, unfortunately, in today's day and age, "I don't know" isn't an excuse on – on why you did something.

Q But if there's no definition or there's no attorney general opinion, then how is somebody – how is someone supposed to make sure they don't violate the law if you don't –

A But –

Q – if you don't know and –

A Well, you just – what definition, because there's a definition that we've been referring to all morning.

Q Like I – say, I go to you, and I say, "Look, I'm a sex offender. I want to go on bettycrocker.com and set up a profile. I see that they have no age requirements. Can I do this without running afoul of the law?"

A And all – I guess you would need to – we – we, whoever you're asking, would need to find out what the primary purpose of Betty Crocker is. Because, clearly, there is an exception written in that pertains to

commercial trans – facilitation of commercial transactions.

Q But say, assume Betty Crocker's got a bunch of ads, and they have a big dialog going so that you and I [94] can talk about recipes. But, you know, we can talk about other things and –

A Yes, ma'am.

Q – and we establish a similar view on brownies, and we want to talk about it and have a burgeoning friendship in another venue. Is that going to run afoul of the law?

A Ma'am, I'm going to say it refer – it has to go back to what the in – the primary intent of the websites – the folks that maintain Betty Crocker – (inaudible) using Betty Crocker.

Everything after the primary intent, I – I can't comment on that. All I can say is the primary intent of bettycrocker.com, in my opinion, is to – the purpose to facilitate – to facil – the facilitation of commercial transactions.

What happens outside – what happens from secondary or – purposes, I can't control. I don't know. I can't comment on that.

But in my opinion, Betty Crocker – for the example, bettycrocker.com is to facilitate commercial transactions.

Q And what exactly would primary mean? Does it mean like a certain percentage? Like, say, Betty Crocker has – wants to derive revenue and permit the social [95] activity. Forty percent is their goal and sixty percent is to have people feel more positive about Betty

Crocker as a brand, and that's their primary business purpose.

Is sixty percent primary, or is it seventy? How do you quantify primary?

A I can't quantify primary with a number, especially when speaking for somebody else's company. What might be primary to me is going to be – won't be primary to them.

Obviously, they've got folks in charge of that company that's going to set out their primary goals, primary missions and whether or not they choose to put a number on it, I don't know. What's primary to them is going to be primary – different.

Q And where it talks about minor children, now, there's different, I guess, definitions for minority. You had talked about, as a defendant, you're – you can be charged as an adult at sixteen. And it's eight – you had said that you thought it would be eighteen for the – what's a minor.

A Younger than, yes, ma'am.

Q What about twenty-one? I mean, you can't drink until you're twenty-one. Aren't you still a minor if you're under twenty-one?

A Well, you can serve in this – you can serve in [96] the military while at eighteen.

Q Well, I can get married at sixteen, but –

A Sure can.

Q – but does that mean I'm an adult? I mean, is there – what's – I want to know what minor means. Say I don't know. What do you – what is minor as your interpretation?

A I'll refer back to my answer. Minor, according to my interpretation, is under the age of eighteen.

Q And did any – there's – did you receive any sort of guidelines or attorney general opinion on defining exactly what a minor is?

A While in – while investigating – investigating these specific cases? No, ma'am, I did not.

Q Okay. So an eighteen-year-old can go on it, but not – but if someone's nineteen, then that would be safe for a person to access that website if –

A I said under the – I'm sorry. I said under the age of eighteen.

Q Okay. So if they say –

A So seventeen will be younger.

Q – "Okay, no one can sign up for this website unless you're an eighteen-year-old." And the Defendant makes contact with a nineteen-year-old. So that person's [97] not a minor?

A How – how I interpreted it? No, ma'am.

Q And with the maintaining of the web page, now I set up a web page of Facebook before the law – before this law comes into effect. Now, although I don't make any additional posts, my friends keep it going, because every time they write on my wall, it perpetuates the web page; right?

A Something is updated on your page, yes, ma'am.

Q So there'll be dates after the law is in effect, and I can't go on there to delete it because then I'm accessing it; correct?

A Correct.

Q So am I maintaining the web page because I'm not deleting it? Because the web page is continuing to exist.

A I will – I believe I commented on this earlier. I believe there is no provisions put in place to get these – you know, to have your accounts deleted without accessing it. Obviously, we don't want anybody to violate the law so that they're not violating the law, if that makes sense.

Q I understand that. Am I maintaining it by not having it deleted? I mean, am I maintaining it just by permitting my friends to continue to post on it? [98]

A I guess, as far as technical definition, as far as technology pertains to maintain, I don't know if having somebody post stuff on your page versus people posting stuff on your page versus you going out there and changing information, if that equals maintain.

But now if you're asking me my definition of maintains versus what I think the legal definition of maintains should be, obviously those are – those might be two different things.

Q Because we don't know what maintain means in the scope of the statute.

A As far as I – as far as I know, there is no definition as far as technology goes for maintains a website.

Q And where it talks about, under Subsection 2, of facilitating the social introduction between two or more persons meeting other persons or information exchanges, does that section – is that – you had described earlier a scenario where you can like a group, and then you come into contact with people that you

hadn't previously known, and then you have had a facilitated social introduction.

But if I'm only talking to my family members or people I already know, is that a social – is that – is Subsection 2 satisfied? [99]

A I guess, depending on your definition of social introduction. Does introduction have to be between the meeting of two people that don't know each other, or an introduction, a public venue for two people that do know each other to talk – to start talking again.

Well, what – what is introduction? Is it – like I said, is it meeting new people, or is it the opportunity for two people that do know each other to start interacting again?

That – it – it's not clear. The word – so it depends on what – how you interpret the term "introduction."

Did that answer your question?

Q Yeah, it does. It does, thank you.

A Yes, ma'am.

MS. NORTON-RAMIREZ: I appreciate that. I don't – I think I'm finished, Your Honor.

THE COURT: The State's examination of the witness.

CROSS-EXAMINATION CONDUCTED BY MR. McCULLOUGH:

Q I'm going to pick up right there –

A Yes, sir.

Q – where Ms. Norton left off, since we're on that train of thought. 14-202.5 Subsection (b)(2) includes, as

part of the definition of a commercial [100] social networking website, as one which facilitates the social introduction between two or more purposes – two or more persons for the purposes of friendship, meeting other persons or information gained.

Do you agree with that?

A Yes, sir.

Q And the question that I understood Ms. Norton to ask was, what if you're using the website simply to contact people you already know, family, friends you're already friends with, stuff like that.

A Yes, sir.

Q In your reading of Subsection (b)(2), is that really what it's all about? Or is it really, again, what the website's function or purpose is?

In other words, it says "facilitate a social introduction between two or more persons."

So even if you're only using the site to contact people you already know, would it still be a violation to access, for example, Facebook, because Facebook, in fact, facilitates as its function the social introduction to people, presumably who don't know each other, even if a given offender isn't using it for that purpose.

A So the question is, is it a – it was a violation if you're just interacting with people you [101] already know –

Q Uh-huh.

A – while using Facebook.

Q Right.

A I would say yes because of the functions – the primary function of Facebook and what the definition of a commercial social networking website is per this general statute.

Q So, again, in a way, that goes back to the discussion that was being had about the commercial exception. And your answer to that was, several times, if I remember correctly, that it's the purpose – the primary purpose of the website that is important and not the individual user's use of the site; is that correct?

A My interpretation – my interpretation of the exception, yes, sir.

Q I want to go back to this question, and Mr. Gerding and Ms. Norton both touched on this in some detail, or at some length.

And that is how – part of what has to be shown in order to show that an offender has violated the statute is that the offender knows that the site permits minor children to become members or create or maintain personal web pages on the site. Agree?

A Sir. Yes, sir. [102]

Q And their basic question, I think, boiled down to, "Well, how would they know?" And Mr. Gerding, and Ms. Norton, to a certain extent, went into terms of use.

Mr. Gerding, in particular, used the example of Match.com. So since we've used that forum, let's go back there.

If Match.com's terms of use indicated that persons who were eighteen years of age or older were the only ones authorized to use the site under the site's terms of use, in your opinion, would the offender be able

to rely upon those terms of use to access the site, without fearing of running afoul of 14-202.5?

A And I believe my answer – I think this is similar to a question asked earlier.

And I believe my answer was that, if Match – if Match.com fell – this is hypothetical. If it fell underneath – you know, if it went through (b)(1), (b)(2), (b)(3) and (b)(4), and it met – and it met all those – the criteria set by the State, I believe my answer earlier was that the registered offender would not be in violation until they realized that a minor was on the site and had access to the site; and at which point, once they did realize a minor had accessed the site, then any subsequent interaction on that site would have been a violation because a minor was permitted to be on the [103] site, regardless of what the terms of use were, I believe was my answer earlier.

Q I recall that, as well. And I want to dig into that a little bit deeper.

Would you agree that if a – that the word "permit" implies permission? That if I permit someone to do something, I am giving them permission to do that?

A I could agree with that statement, yes, sir.

Q Would the fact that – I'm asking you to rethink your answer for a minute.

A Yes, sir.

Q Would the fact that a sixteen-year-old had a post or an account or profile on Match.com or any other site, would that in and of itself – taking into account that the terms of use exclude that account, would that

in and of itself mean that the website is permitting the sixteen-year-old to maintain that account?

I'm just asking you to think on it.

A Right.

Q As an officer who's thinking about, say, charging the Defendants, and somehow you've come to find out, okay, Mark McCullough accessed Match.com, has an account profile there. Somehow you found out that I knew that sixteen-year-old also had an account on that day, even though the terms of use say she's not supposed to, [104] and then I continued to access it after that point.

Would you – not whether you would charge it, because I think that's too hypothetical, but would you believe it would be chargeable?

A They – I mean, building off the previous hypo – I mean it's a – all we did is build off the previous hypothetical situation, and I said – and at that point, I said, "Yes, I believe that it would be a violation if the registered offender initially didn't know that minors were on the site. And once they did know that minors were on the site, then I believe it would be a violation if – as long as that site met(b)(1), (b)(2), (b)(3), (b)(4).

Q So the fact – the fact that the sixteen-year-old has an account profile on the site, in your opinion, imputes permission to the website.

A I guess, since there are no safeguards in place to insure that they aren't, I guess – I guess I would say that, yes, permission – or the permitting – since it's still there and still on there, that I would say that they – they are permitting it to be there.

Q Would you call them and ask?

A Would I call – would I call Match?

Q Yeah.

A In this situation? I did not in any of the [105] other situations, so I wouldn't – I couldn't venture to say that I would or I wouldn't. I can tell you based on what I've done in the past, and – and I did not call, you know, Myspace and/or Facebook.

Q Well, in this case, we're talking about Facebook and Myspace, which I think everyone concedes –

A But – but all I can do is base, you know, my future actions on – on experiences and training in the past.

Q Right. Well, and Myspace isn't – I guess the point I'm trying to get at is, when you talked – either you talked to Myspace or you got something from Myspace that said if they become aware that a sex offender is on the – has posted an account, has created an account or maintained his page on their – on their site, they delete it.

A Correct, sir.

Q All right. So in the hypothetical we've been using, what if Match.com has a similar policy?

A I know that – well, I know Facebook has –

Q With regard to minors not setting up, and keeping it in the context of minors. What if Match.com has a policy that says, "Well, if we find out there's a sixteen-year-old or anyone under eighteen, we delete that account"? [106]

A Would I, as a law enforcement officer, contact Match.com and tell them? Honestly, probably no, because there's no criminal law that's been violated as

far as a sixteen-year-old accessing Match.com, whereas in this case, specific, why I'm up here right now, there is a violation of the North Carolina general statute that prohibits registered sex offenders from accessing commercial social networking websites, which is why I contacted both of them to have these accounts deleted pursuant to my investigation.

So, no, I wouldn't have contacted Match to tell them there's a sixteen-year-old, no, sir.

Q But there is a criminal statute which has been violated, not by the sixteen-year-old, but at least potentially by the offender.

A In – in your hypo – in the hypothetical situation?

Q In that case.

A How I –

Q Which requires –

A – interpret? Yes, sir.

Q I'm sorry. Which requires him to know that the site permits minors to maintain vigilance or maintain the account fully.

A Yes, sir. [107]

Q Now, there's been a lot of discussion about sort of what constitutes the commercial social networking website. There's been discussion of front pages, main pages, subpages and the like.

And I think we've gotten a clear answer from you with regards – at least with regards to Facebook – correct me if I'm wrong – that basically any access by an offender of anything on Facebook, even Governor

Purdue's website – Governor Purdue's page on Facebook, would be a violation.

A I believe so, yes, sir.

Q What about – what about Google? That was the other example that Mr. Gerding used. I think you said, when he asked you that question about Google, that accessing the front page –

A Yes, sir.

Q – which is just the search –

A Search engine.

Q – function page –

A Yes, sir.

Q – that that would not be a violation.

A Not how I interpret it, no, sir.

Q Even though there are links at the top, describe what – you're familiar with what the front page of Google looks like; right? [108]

A Just long enough when I opened up the search engine to type in my question into the box and hit enter, sir.

Q Do you remember the –

A But otherwise, I've never navigated it, I've never had a gmail account, I've never –

Q Yes. Do you know – have you noticed that there are links at the top?

A Honestly, most of the time, at the top, I notice that about every – every season change. There's a new type of picture displayed at the top. I mean that's – all

I'm – that's about the most that I pay attention to the top of Google, sir.

Q It's all right.

MR. McCULLOUGH: Approach the witness?

THE COURT: Yes, sir.

Q From Defense Exhibit No. 1 – actually, I'm just going to hand you this first page, which for identification purposes, for the record, at the top it says, "http:\\www.google.com" described as home page, email, blogs, photos, U-tube groups.

Handing you that from Exhibit – Defendant's Exhibit No. 1.

THE COURT: What page is that in Exhibit 1?

[109]

MR. McCULLOUGH: Ninety-four.

WITNESS: Ninety-four, Your Honor.

THE COURT: Thank you.

CROSS-EXAMINATION RESUMED BY MR. McCULLOUGH:

Q If you'll look at the top, you'll see the – do you see the search engine sort of in the middle of the page?

A I do, sir.

Q And if you look at the top left, do you see other links?

A I do, sir.

Q What are they?

A Reading from left to right, web, images, videos, maps, news, shopping, gmail, and then a drop box

under "more," with another pick list of different options to choose, sir.

And then, all the way across to the far right, a sign-in tab.

MR. McCULLOUGH: Approach?

THE COURT: Yes.

Q I'd also hand you pages 95 and 96.

A Yes, sir.

Q And tell me if you agree that this – these are screen captures of basically what's contained under that "more" tab that you were talking about. [110]

A I've never used it, but I mean, it appeared to be, according to the Internet address at the top, after Google.com\in – i-n-t-l\e-n\options, it appears to be the – on page 94, at the bottom of that pick list, it shows "even more."

And this would – it appears to be that's what would come up.

Q So it's –

A That's what I would reason would come up.

Q – a listing of other categories is what it boils down to, though.

A Appears to be, yes, sir.

Q Do you see a listing for – or a link or a listing for groups on there anywhere?

A Under the "more Good products," I'm looking on – I'm looking on page 95, right side of the page, it shows a bold heading of "communicate, show and share." The fourth link underneath that is "groups,"

with an arrow next to it. I believe the arrow was added after the screenshot was done.

Q Right.

A "Create mailing lists and discussion groups."

Q Now, the fact that those links or the – or a person's ability to navigate from the home page of Google to any one of those things, if one of those things meets [111] the statutory definition of a commercial social networking site, would that change your answer with regard to the front page of Google?

In other words, does the front page of Google qualify?

A I don't believe the front page – I don't interpret the definition under (b)(1), (b)(2), (b)(3) and (b)(4), as Google falling underneath that. Now, a page off of Google may, if – as long as it hits (b)(1), (b)(2), (b)(3) and (b)(4). It – it –

Q That would –

A – falls under all four of those.

Q All right. That was my next question.

So if – what would be something on there that, at least on its face, might qualify under the statute as meeting Subsection B requirements for meeting that definition?

Would groups potentially qualify?

A I'm sorry. Yes, sir. I'm sorry, I was looking at – I was looking at page 96, which just had different –

Q Okay.

A – different choices, sir.

Groups. There was a – just looking on the face, ORKUT, "meet new people and stay in touch with [112] friends."

Now, whether that allows – I don't – I don't know whether that allows you to create a personal page or just speak with other folks, I don't know. So I don't – you know, without looking into ORKUT to see if it – it meets, yeah, Subsections (b)(1), (b)(2), (b)(3) and (b)(4), but just –

Q Assuming –

A – looking on the face of it.

Q Assuming, for sake of argument now, that ORKUT, for example, meets the definition –

A Yes, sir.

Q – if a person navigated away – if an offender who was supposed to not violate the statute, navigates away from Google.com, the front page, to ORKUT, have they violated the statute?

A And we're saying that ORKUT does –

Q For sake of argument –

A – satisfy (b)(1) through (b)(4)?

Q Right.

A I – I would interpret it as – I would say that yes, they have violated the statute, sir.

Q So if Face – I'm going to draw a distinction now.

Because Facebook, what I'm understanding, your [113] interpretation of the statute – as a law enforcement who might charge under the statute, your interpretation of what Facebook is, is that Facebook in

its entirety, any access of Facebook, no matter what part of Facebook, is a violation of this statute.

A That's how I interpret it, yes, sir.

Q But not necessarily true about Google.

A Correct, sir.

Q So there are certain parts of Google's global website that could be accessed without violating the statute, but other parts that could.

A Yes, sir.

Q In other words, I'm drawing a distinction between main pages and subpages.

A Yes, sir.

Q So it is possible that a person could – could access any given website without violating the statute, but navigate to another part of that website and essentially run afoul of the statute.

A I could agree with that statement, sir.

Q Mr. Gerding and Ms. Norton, both, went into some questions about how we know what a minor is.

A Yes, sir.

Q We're talking, obviously, in here in the context of criminal law. [114]

A Yes, sir.

Q You've been on the – you've been in juvenile investigation.

A Yes, sir.

Q And now you're in homicide investigations.

A Yes, sir.

Q And you've been with the police department in Durham since October of 2001.

A Correct, sir.

Q Other than charging defendants who are sixteen or seventeen as adults, can you think of any other time when the definition of a minor, in the context of the criminal law, is not eighteen?

A In criminal law, no, sir. Not that I can – not that I can think of, sir.

Q Mr. Gerding was asking you questions – toward the beginning of his examination, he asked you why – why you chose Myspace and Facebook.

A Yes, sir.

Q And, in fact, in the seven or eight cases that you charged, were they all in Myspace and Facebook violations?

A Well, not each – I mean, each case was one or the other. I mean, all – all the investigations that I did pertaining to registered sex offenders illegally [115] accessing commercial social networking websites pertained to either Myspace and/or Facebook. There were no other social networking websites that I looked into.

Q And when he asked you why, you said because they're the most common ones you've heard of, generally. Not necessarily in police work, but just as a general proposition, the ones you heard the most about –

A Yes, sir.

Q – were Myspace and Facebook. If someone came up to you and said, "I saw John Sex Offender posting

comments on bettycrocker.com," would you run off to investigate that? Just talking about recipes and stuff, but he was on the site.

A And – and it's – are we still referring back to my comments that I don't think that bettycrocker.com falls underneath a commercial social networking website because of what its primary function is as pertains to the exception? No, I wouldn't go investigate it, sir.

Q Well, and that's why; right?

A Yes, sir.

Q Because you don't consider bettycrocker.com to meet the statutory definition.

A On – per the except – based on the exception, no, sir.

Q Because you didn't – because in your [116] professional opinion, bettycrocker.com's primary purpose is the facilitation of commercial transactions.

A Yes, sir.

Q Are you familiar with Amazon.com?

A I believe it's a website where you can purchase items, sir.

Q Ever been there?

A I believe I purchased some books – books off of there a few years ago, sir, but – but not on a regular basis, no, sir.

Q But you know what the – you know what the website is.

A I believe it – it's there for people to buy items off the Internet, sir.

Q I'm going to show you page 163 from Defendant's Exhibit No. 1, which is the front page of Amazon.com.

If you'll look at the top – and this is a black and white picture but, you know, where the blue sort of description bar across the top would be.

A Yes, sir.

Q On the left of that blue bar, what does it say across there?

A "Amazon.com: on-line shopping for electronics, apparel, computers, books, DVDs and more, windows Internet explorer." Is that the line you're referring [117] to, sir?

Q Yes, sir.

MR. McCULLOUGH: Approach?

THE COURT: Yes.

Q I'm showing you now pages 165 through 169 of Defendant's Exhibit No. 1. And you'll see arrows that Mr. Gerding has added to these for demonstrative purposes.

I'm going to hand you those. And on each of those pages, if you will, just tell me what you see by the arrows on those pages of the exhibit.

A Yes, sir. Page 165, under the block "settings," or titled – appears to be titled "settings" on the left, right side of that block, subsetting "address book," arrow next to the "manage address book" link, there's an email from Amazon subsection. The link with an arrow next to it says, "email preferences and notifications."

Bottom of the page, block entitled "personalization." Under "community," the link for "your public profile," there's got an arrow. That's the end of 165.

166, under the "create your profile," your page on Amazon, there's an arrow, "connect with Amazon friends and interesting people." That's the end of page 166. [118]

167, "Share more about yourself." There's a listed – there's a list – or there's an option to put a web page, and listed is www.GerdingLaw.com. It's the only arrow on page 167.

168, "Share more about yourself." The arrow appears to go to the shaded-in box, not to a specific link. The box is "select photo of your – from your computer." There's a place to attach photographs and add captions. And then there's a terms and conditions waiver that you need to address before it allows you to post a picture.

And on page 169, under "Amazon content submission agreement," under "eligibility," – would you like me to read the entire paragraph under "eligibility," sir?

Q No. Just read the clause that refers to the age restriction.

A The last sentence under – in the "eligibility" paragraph states, "Further, you may not submit any personally identifiable information about any child under the age of thirteen."

Q Now, again, you're not a frequent user of Amazon.com.

A Like I said, I believe I've used it one time to purchase some books for work, sir. [119]

Q So I suppose this – this could be instructive because of your lack of personal knowledge of Amazon.com.

If someone brought to your attention that a sex offender was – had created a profile on Amazon.com, they accessed some of those links to connect with friends or others, or posted reviews about products or any of that, and you went to Amazon.com, first –

First of all, what would be your initial inclination?

What would be your initial thought about the fact that somebody had a profile on Amazon.com?

A I believe per – based on my – my answer before that the art – or the act of accessing Amazon.com wouldn't violate general statute 14-202.5, Subsection A, in my belief.

But there could be subsections of Amazon.com that could violate it, if it fell within (b)(1) through (b)(4).

Q All right. So that's all you know right now.

Now you've decided to check into it further, and you go to Amazon.com, and you navigate your way around, and you find these pages that you've looked at.

Would you – based upon what you've seen there, in your professional opinion, cause you to charge a person for accessing any of those subpages? [120]

A I would say that, based on my previous – I think I answered previous, that the website, Amazon.com's primary definition is to facilitate the

transaction of goods. And – and because of that, Amazon was cleared.

And if the person was accessing Amazon, and Amazon was cleared – I would say if the subsections fall within (b)(1) through (b)(4) and did not fall under the exception – if the subsequent pages didn't, then they would be in violation.

Q Now, all of those pages – and you might have to – you'll have to go back and look at these.

If you look at the address bar on each of those pages, do they all begin with Amazon.com, with all that credit stuff, www. But are they all subpages of Amazon.com?

A Yes, sir.

Q Would you believe, then – so they're subpages of Amazon.com.

A Appears to be, yes, sir.

Q And you said before that Amazon.com would fit within the commercial exception.

A Yes, sir.

Q I'm just asking your professional opinion. If Amazon.com's – if Amazon.com, as a business, has as its primary purpose in maintaining its website the [121] facilitation of commercial transactions, would the fact that it also permits the creation of accounts and profiles and things like that, would that not also fall within the commercial exception?

A Yes. Actually, yes, it would. I said earlier that I didn't think it would, but no, I believe it would.

As long as the primary purpose of the website is to facilitate financial transactions or commercial transactions, I think it still would fall the – under that.

Q So there's a broader concept, then. It is – it is possible, then, for websites to have subpages that might, if taken – if taken in a vacuum, would meet the definition as set out in Subsection B.

But if you take it out of a vacuum, and you look at the site's primary purpose, and you determine that the site's primary purpose is a commercial one, then accessing that site and even those subpages would not violate the statute.

A In – in my professional opinion, no.

MR. McCULLOUGH: No further questions.

THE COURT: Mr. Gerding's redirect.

MR. GERDING: Thank you, Your Honor.

REDIRECT EXAMINATION CONDUCTED BY MR. GERDING:

Q Corporal, I want to ask you some specific [122] questions based on some Ms. Norton asked and some that the State asked you, as well.

Starting with Ms. Norton's questions about the use of Facebook for business purposes –

A Yes, sir.

Q If a registered sex offender owned a business. Let's say he owned a bicycle repair business, and wanted to have a presence on Facebook for his business. But he knew, after talking to you or someone at Durham Police Department, that he should not access Facebook.

Could he, nonetheless, have employees create a Facebook page for his business and run it for posting personal information, including his name, because his name is the owner, and those type of things – would a business owner be allowed to use Facebook for his business if he did not individually sit down at the computer and access it?

A I guess – I will refer back to my answer before, that the – as it pertains to Internet websites, the definition of the word "maintain," which is in the – which is in the general statute, is not clear on whether it's the individual maintains it or the individual has somebody maintain it.

Using the police as an example, if I know I can't go into your house, but I ask the ADA, who is not a [123] sworn law enforcement officer, "Go into his house and do this for me," he is acting as my agent; therefore, he is subject to all rules that I have to follow.

So if I apply the same logic reversely, if – if a registered sex offender asks somebody to do something that they can't do by accessing or maintaining the page, are they responsible – are they responsible or have they met the definition of maintaining a page?

I – again, I don't have enough law school knowledge behind me to accurately answer that question. So the answer I've given you is the best I'm – the best I've got.

Q So in other words, it might depend on how the definite – how the word "maintained" is defined. If it means individually access – individually going on the computer or directing someone else to.

A As far as that hypothetical –

Q Yes.

A – situation, sir? I can agree with that statement.

Q Okay. The second question along similar lines, but let's reverse it.

Let's say a business owner who is not a registered sex offender, no criminal record, they own a bicycle business, but they have an employee who is a [124] registered sex offender as an employee of the business. And they have – the business owner has a Facebook presence.

Can they have their employee, who is the registered sex offender, go on-line and update the business information on the Facebook page, or would you consider that to be accessing and maintaining a Facebook page?

A Well, I would say that it's a violation and – and the law – it doesn't say that there – there's not an "and." It's access or maintain.

So just the mere fact that they have access to the site, regardless of intent, because the statute doesn't imply anything about intent. It doesn't say that the person went on there to do business. They went in on there to do personal matters. They went on there to do, you know, illegal – you know, to try to – I'm – I'm not implying any of that.

All I'm saying is that it doesn't specify intent. All it says is that it was accessed, a commercial net – a commercial social networking website.

So I would say that if it – if done even under employment reasons, an employer said to do this, I would say that it would still be a violation, sir.

Q I want to now move onto the questions from the [125] State regarding Betty Crocker and also Amazon. And I want to invite your attention to Subsection C of the statute which we've been talking about.

A Yes, sir.

Q Subsection C2. The subsection says that, "It has as its primary purpose the facilitation of commercial transactions involving goods or services between its members or visitors."

A Yes, sir.

Q Is that accurate?

A Word for word, yes, sir.

Q So in your discussion with the state about the Betty Crocker website, let's say that Betty Crocker does want people to look at their website so that they buy products from Betty Crocker.

How would that fit in the definition or – or the exception of Subsection 2, which talks about commercial transaction between members or visits, not between members, visitors and the website company, the company on the website?

Am I misreading the statute?

A No, I think – I think, again, it's down to interpretation, whether you're talking about facilitate the commercial transactions of all the goods or services between its members. [126]

It doesn't say "and itself." It doesn't say "its members and each other" or, you know, "other members."

It's not clear on whether they're talking about transactions between members and the parent company, being Betty Crocker, or member A selling something to member B, or a visitor buy from either one of those two or from the company itself.

Q Is something that you would look at in determining that primary purpose maybe the terms of use or the statement on the website itself as to the purpose of the website?

A Those would be areas that I could look at, yes, sir.

Q So if the Betty Crocker website said the website is owned and provided by General Mills, and it's provided for your personal entertainment, information and education, and then there's nothing in the terms of use which says, "We want you to buy our products," do you think those terms of use would at least be persuasive as to whether the primary purpose was to cause people to buy the products or, alternatively, to enjoy the social aspects of talking about recipes?

A I guess I would reason that it would be – or it could be – or I guess it would be reasonable for [127] someone to – anyone could conclude that Betty Crocker, just from life experiences about -- you know, concerning baking, that – I'm not – I – I don't want to use the word "assume."

But you could conclude that Betty Crocker – and a – a website about Betty Crocker would be about Betty Crocker products and recipes and things of that nature.

Therefore, a big conversation about Myspace and/or Facebook would be about those specific

networking websites, just on, I guess, common known – and when I say known items, just common beliefs.

Q Would you agree – and, again, I'm guessing you're not too familiar with the Betty Crocker website, but –

A Never been there, sir.

Q Okay. But as far as a website like Amazon.com, where you go to the front page and basically you are presented with goods for purchase –

A Yes, sir.

Q – as opposed to a Betty Crocker website where that's not what you see on the front page. And I've got screenshots of this, Defense Exhibit 1, page 2, page 3, page 4. There may be advertisements on there, but it's not links for actually purchasing products. [128]

Could you see a distinction between a website like Amazon and a website like Betty Crocker, where one is more about product information and another is about product sales?

A Based on – based on the screenshots that I've seen, I think what – I think you can infer that, or you can make a reasonable, I guess, assumption, or a reasonable judgment or a decision about – about one versus the other, based on what you can see. Yes, sir.

Q And so along those lines, I'll ask you with Amazon.com, as well. Do you have enough familiarity with Amazon.com to know whether that website facilitates commercial transactions between the company, Amazon.com, and visitors, or its primary purpose is to facilitate commercial transactions between visitors to the site than themselves?

A I can – I can only refer back to, like I said earlier, a personal experience where I believe I – believe Amazon.com was where I purchased a few books for work. But that was four year – four or five years ago. So nothing recent. But that was my only interaction with the website was – was for purchasing books.

So as far as person A selling something to person B, I don't know. I know that I – I believe I purchased some books from the website. [129]

Q Stickin with Amazon.com, the State was asking you questions about if the website, sort of as a whole, is determined by you or whoever is investigating, to fit within one of these exceptions, then it doesn't matter if there are subpages which might otherwise meet the definition.

Is that an accurate representation of what you said?

A I believe it is, yes, sir.

Q So, in other words, if Amazon.com and some of its features for people to talk to each other or communicate and be social, let's say Amazon.com had subpages which, in essence, were virtually identical to Facebook, let you put up pictures, do everything that Facebook lets you do, but it's just a subpage behind one of those backslashes.

Starting with Amazon.com, you're saying a sex offender – registered sex offender could have free rein on there, but couldn't on Facebook.

A Based on my interpretation of – of the law, how it's written and the exceptions that are included, that's my interpretation of it, sir.

Q So a registered sex offender could not get on Facebook and do email chat and those things, but could get on an identical subpage of Amazon and do those [130] things?

A Based on my interpretation of the law and based on my interpretation of what the primary functions of the two separate sites are and how they – they are defined per what the State has given me, yes, sir.

Q And I think you said the same thing about bettycrocker.com, that if somebody called and said, "Hey, we know that registered sex offender Joe is logged in to bettycrocker.com, talking about recipes," that wouldn't pique your interest to investigate; right?

A Based on the information that I had and – and how I interpret the exceptions and the definition, no, sir. It wouldn't – it would not get my interest, no, sir.

Q What about if the registered sex offender had started a thread that said, "I like little girls, and I want to talk about that"?

A As a – as an investigator? I would probably forward that information to our Internet Crimes Against Children Unit, where we have an investigator specifically assigned to monitor that sort of thing.

And there might be other North Carolina general statutes that have been violated.

But as it pertains to this specific statute, I wouldn't be looking at this specific one, but there might [131] be other ones that might either have been violated or, you know, might be violated in the near future.

So that – you know, there are other avenues, as a law enforcement officer, we could intercede as far as public safety goes, sir.

Did that answer your question, sir?

Q Yes, it did. You also mentioned, in response to the State's question regarding the definition of "minor," that in the criminal context, you weren't aware of anything where a minor was anything other than seventeen and below – so under eighteen – except for charging juveniles. That was the only exception you came up with when the State was asking you, as far as some –

A And – and while you're asking the question, the one thing that I can think of as – as far as it pertains to a person under the age of twenty-one being considered a minor could – and not a suspect, could be like – something like alcohol sales.

You know, if you were looking at a business that were selling – that was selling alcohol. But that would be considered somebody under the age of twenty-one. Not using the term "minor," but under that age.

But otherwise, as far as a – other than defendant, under the age of eighteen, sir.

Q Are you familiar enough with statutory sex [132] offenses to know that the age of consent for sexual intercourse and other sexual activity is age sixteen?

A Yes, sir.

Q So in that context, that would actually be an additional area of the criminal law where a minor is actually younger than eighteen – I'm sorry – is younger than sixteen?

A Now, are we talking – are we talking about the minor as a suspect or the minor as a victim, when you – when you're using the term "minor" and then talking about sex offenses – sex offenses and ages?

Q Well, I had understood that the question and answers from the State to you about the context of the term "minor" or knowing what a minor – how a minor was defined in a criminal context, it sounded like you said the only area in the criminal context that you knew of where a minor was anything other than someone under eighteen was a defendant could be charged as an adult.

But that was the only area of the criminal law where you knew that someone sixteen and seventeen was not considered a minor. They were considered an adult.

A Okay.

Q But isn't it true, in the context of statutory sex offenders, that that is an area of the criminal law where an adult is sixteen and seventeen and eighteen and [133] on up?

A Yes, sir.

Q So does that affect your consideration of what a minor might be?

A I would still lean – I would still stand by my – as far as this statute pertains – as far as this statute was, that my belief on a minor was still the age of eighteen, sir.

Q So, hypothetically, if there's a website that meets this full definition of commercial social networking website, that's not in question.

And their terms of use are that a person has to be sixteen or older to access the website, are you saying that that would be off limits to a registered sex offender because, under your definition of a minor, sixteen to seventeen-year-olds are permitted on that website?

A If we're looking at our hypothetical website, and if those were the terms of use, I would – still hypothetical – I would seek additional guidance as what the State would mandate was a juvenile.

Facebook and Myspace, I know from experience, allow younger than sixteen to access.

So if it – if it's specifically stated out, sixteen and above, I believe I would try to seek [134] additional guidance as to what – what the State would say would be – would define that minor, sir.

Q Even though, right now, you think and have testified that you think that a sixteen and seventeen-year-old would be a minor under this statute?

A Correct.

Q You'd probably seek additional guidance.

A If – if under the terms and if, you know, hypothetical situation, those terms and usage terms specifically stated that age, yes, sir.

MR. GERDING: I don't have any other questions, Judge. If I may just approach and get my copies.

WITNESS: Oh, yeah.

THE COURT: Yes.

We're at the midpoint of our afternoon session, the time being 3:26. Mr. Bailiff, we'll take a recess until 3:45.

BAILIFF: 3:45. The court is recessed until 3:45.

(Court in recess from 3:26 p.m. until 3:45 p.m.)

* * *

(Court resumes.)

[134:24]

THE COURT: If the parties in the Johnson/Packingham matter will come forward again, and [135] the witness may resume the witness stand. We are now returning to the present case, as we took a recess for the unrelated jury trial which has now come to an end. And I thank counsel for their patience as we resolved that matter in full.

In terms of this matter, I'll remind you that you're still under oath.

WITNESS: Yes, Your Honor.

THE COURT: And, Mr. Gerding, you had completed your redirect, I understand; is that correct?

MR. GERDING: Yes, Your Honor.

THE COURT: So for the Defendant Packingham, Ms. Norton-Ramirez, you may have your examination.

MS. NORTON-RAMIREZ: Your Honor, I have no additional questions.

THE COURT: All right. Thank you.

Recross, the State.

MR. McCULLOUGH: Approach the witness?

THE COURT: Yes.

MR. McCULLOUGH: I have this printed out.

RECROSS-EXAMINATION CONDUCTED BY MR. McCULLOUGH:

Q Showing you what is – showing you page 20 of Defendant's Exhibit No. 1 –

A Yes, sir. [136]

Q – do you see a red arrow?

A I do, sir.

Q And that is what Mr. Gerding had you read out with regards to education, entertainment, etcetera. "This website is being provided to you for your entertainment, education."

A I don't believe I read it. I believe he alluded to it, yes, sir. I mean, I believe he stated that, but I didn't – he didn't have – I don't believe he had me read it.

Q Below that, do you see where it says, "United States"?

A "United States only," yes, sir.

Q Will you read that paragraph?

A Yes, sir. "Unless otherwise specified, the materials in this website are presented solely for the purpose of promoting products or programs available in the United States, its territories, possessions and protectorates. We make no representation that materials in the site are appropriate or available for use in other locations. If you access the site for locations other than the United States, you are solely response" –

I'm sorry. "You are responsible for compliance with any applicable local laws."

MR. McCULLOUGH: No other questions. [137]

THE COURT: Mr. Schnee, you may step down. Thank you.

WITNESS: Yes, Your Honor.

THE COURT: Further witnesses, Mr. Gerding, for the Defendant Johnson?

MR. GERDING: Yes, Your Honor. I'd like to call Christian Johnson to testify.

(Christian Johnson is sworn at this time.)

MR. GERDING: And, Your Honor, before he testifies, I would like to mention to the Court that I am having him testify as to preliminary matters in the case related to the facts that I set forth in my motion.

I believe, pursuant to rule of evidence 104, my understanding of that is that he is entitled as a Defendant to testify on preliminary matters and may not be cross-examined on other matters which are not related to substance of the preliminary matters.

I just want to state that at the outset, just to make sure that the State doesn't have some other interpretation of that rule of evidence and have any intention of cross-examining him on matters outside of what I'm questioning him on direct, which will only be about facts which establish one of the bases for my challenge in this motion.

THE COURT: Do you intend to confine your [138] questions of this witness to just that area?

MR. GERDING: Yes, Your Honor.

THE COURT: Thank you. What's the State's position on that?

MR. McCULLOUGH: The State will confine its cross to the scope of direct.

THE COURT: All right. It's recognized.

Christian Johnson, being first duly sworn, testifies as follows on direct examination conducted by Mr. Gerding:

Q Good afternoon. Could you tell the Court your name, please?

A Christian Martin Johnson.

Q And are you the Defendant charged in this case that we've been hearing today?

A Yes, I am.

Q Mr. Johnson, I want to direct your attention to when you were charged in this case. And are you aware of the charge that you have in this case?

A Yes.

Q And the charge is that you have maintained a website, a page on Myspace.

A Yes.

Q On the date that you were charged with that offense, were you working? Did you have employment? Did [139] you have a job?

A Yes.

Q And what was your job?

A I was working as a contractor for a company in Durham, called "iContact." I was a quality assurance analyst, a software development team, and I was responsible for software, testing any changes that my team made relative to the company's software, which was email marketing.

Q On the date that you were charged with this offense – I'm sorry. On the date that you were arrested and charged with this offense, were you, as part of any of your employee responsibilities, required to access Facebook or Myspace?

A I hadn't up to that point. But the following Monday, we were starting a project that was going to require integration with social media, specifically Twitter and Facebook.

Q And when you say the following Monday, you mean the Monday following –

A Oh, yeah. I was arrested on the Friday, the 23rd of July. So that was the end of the week. And so the following Monday was the start of a new software development life cycle, and we'd be taking on new projects. And my – my new project was to – was to be [140] part of an – the company's integration with Facebook and Twitter.

Q And when you say the company's integration with Facebook, that would not have been a personal Facebook page that you would have had to create; was it?

A No.

Q What would those responsibilities have required you to do as part as your plan?

A I would have had to test that the software was in the company software application correctly linked to Facebook, that information that it was placing on Facebook or that it was gathering from Facebook was accurate, so – and vice versa.

Or that somebody could use the company's software to publish directly to their Twitter account or to other social media or – or use from within the company, software could go directly to their Myspace page – or their Facebook page. Excuse me.

Q As part of your job responsibilities on that new project, would you have had to log into – first of all, would you have had to type into an Internet browser, www.Facebook.com?

A Yes.

Q And what would you have been required to do after that, as part of your job responsibilities? [141]

A As we had discussed on my team, that we would create a test account for the team, that we would log into and access, to verify information fidelity essentially was being sent properly between the two systems and applications, that integration was happening, you know, per our design.

So I – yeah, I would have to log into that – that test account.

Q Did you, in fact, do any of that?

A No. We hadn't created the test account. We were – that we – our software development cycles were regular, and the next one was about to start on Monday, and that would be part of our software development cycle.

Q What did you do that Monday or that week, which was after you had been charged, in response to the news from your employer that you were going to have to somehow be involved with accessing Facebook?

A Well, I never – I never really saw Monday. Because on Saturday, after I was released from the Durham County Jail, I contacted my employer, Synergy, because I was a contractor, to make them aware of my charge. And to also let them know that I – I wasn't comfortable working on this project and – because of, you know, the access to social media, and that I was going to need to move to another team that wasn't working on integration [142] or social media.

Q What was their response to that?

A They didn't take it well, obviously. They were concerned that I'd been recharged and that – and that the difficulties associated with – with changing teams, and that they didn't – they said that it wasn't going to be –

Well, after some deliberation, they got back to me on Sunday and told me that that wasn't going to be acceptable, and that I wasn't going to be able to remain on the team if I couldn't continue with that project. I couldn't switch teams to a nonsocial media related team. That was vital to my employment.

Q So a requirement for your continued employment was going to be that you had to be able to work or access Facebook?

A Yeah, for – I had to, yeah, be able to complete those projects completely, by accessing the social media sites.

Q So at that point, did you return to that job at all?

A No. They – they laid me off. I went in on Monday to just collect my personal effects, and made myself aware that if there – if an opening came up on one of the other teams, I would be open for that. But [143] there presently was – was none, and so – so, yeah, so my employment ended.

MR. GERDING: I don't have any further – any additional questions.

THE COURT: Cross, Ms. Norton-Ramirez?

MS. NORTON-RAMIREZ: I have nothing.

THE COURT: Cross, the State.

CROSS-EXAMINATION CONDUCTED BY MR. McCULLOUGH:

Q Mr. Johnson, so your understanding of the charge you're here under, that you're accused of accessing or maintaining a website which was related to your employment?

A No. I was – I was – but the terms were so – so hazy to me, I didn't understand the – I thought the terms under which I was charged seemed so confusing to me that I wasn't willing to risk any type of threshold of accessing any social media, even through work, without, obviously, disclosing that to my employer and making them aware of that.

And as we've discussed today, it would be a violation. And so – so that was sort of a – the proper thing to me. I just wanted to be safe.

I didn't want to be in a situation where I had a good argument to win it. I wanted to be in the situation where I wasn't to get in trouble. [144]

Q But at the time you were charged and now –

A Uh-huh.

Q – you understood and understand that that's not what the charge is, of accessing any business – a Facebook page related to the business or working?

A No – yeah.

Q In fact, you were charged for maintaining a site on Myspace which had a – an account identifier of CMJ?

A Yeah.

MR. GERDING: Objection. I don't think the cross-examination as to any of the matters regarding what he's charged with is relevant to the preliminary matter, which is what I'm establishing with these facts. I mean, I think it's a –

THE COURT: Sustained. Sustained.

MR. McCULLOUGH: Nothing further.

THE COURT: Any further redirect?

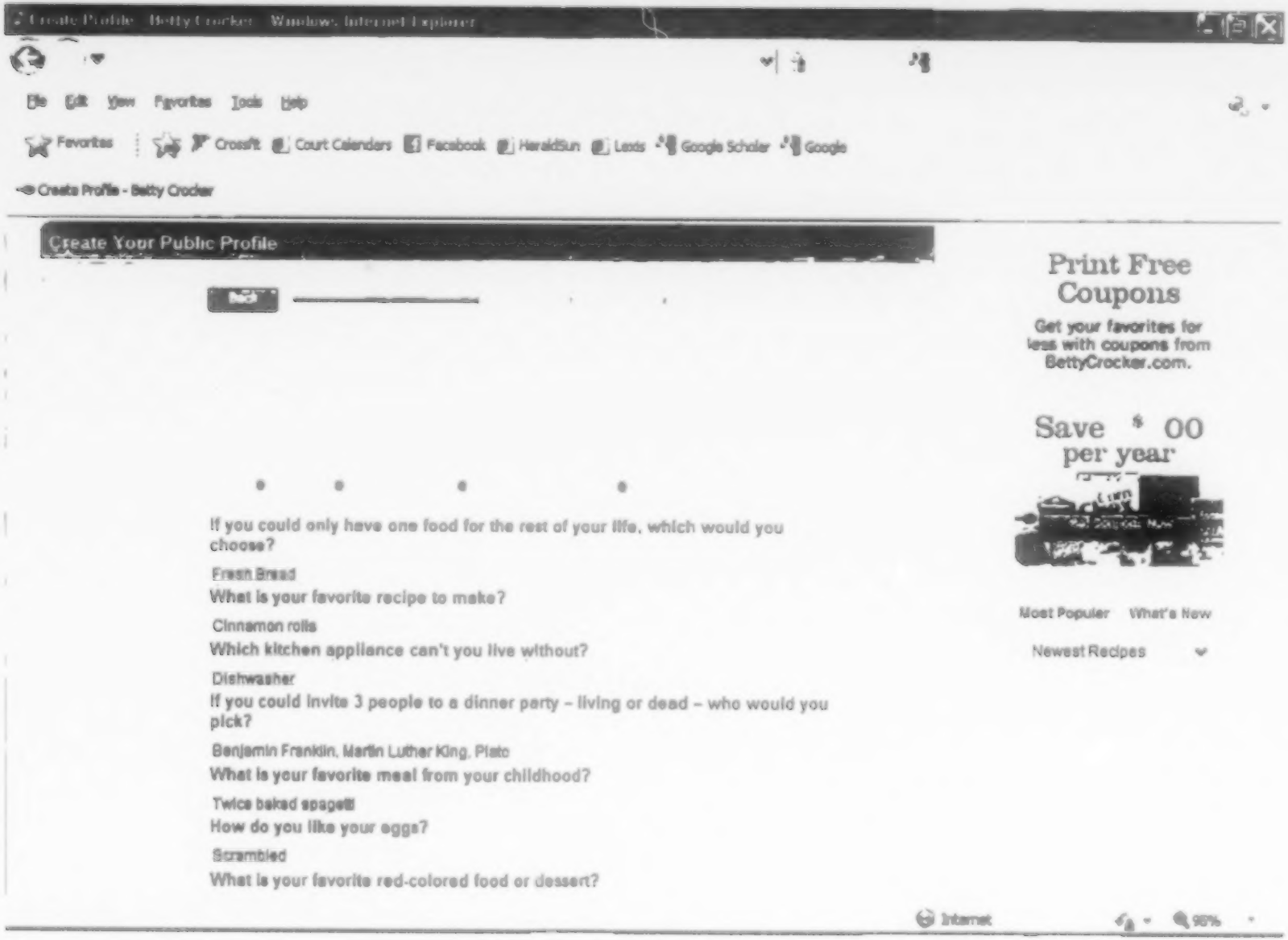
MR. GERDING: No, Your Honor.

THE COURT: You may step down, sir. Thank you.

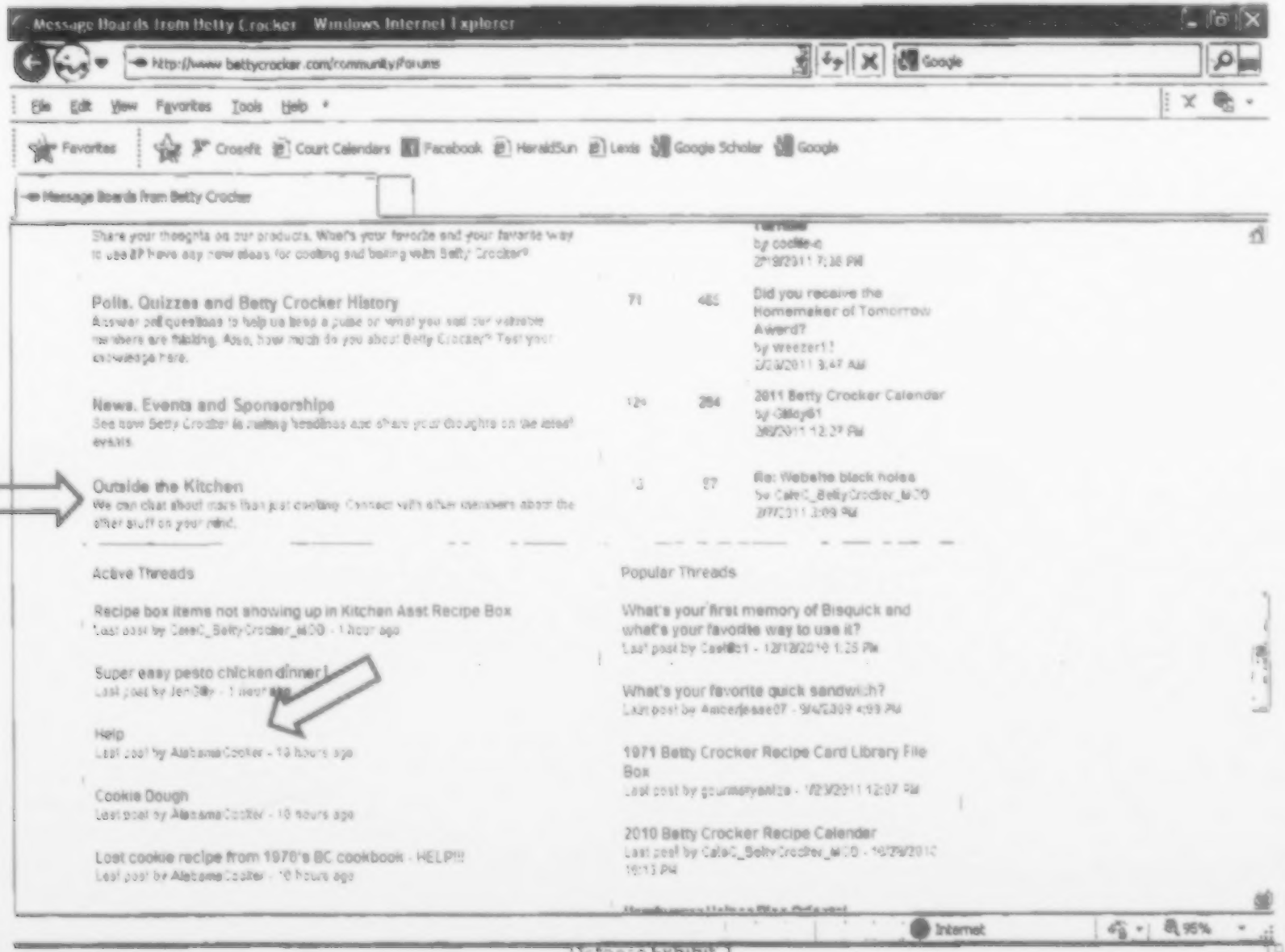
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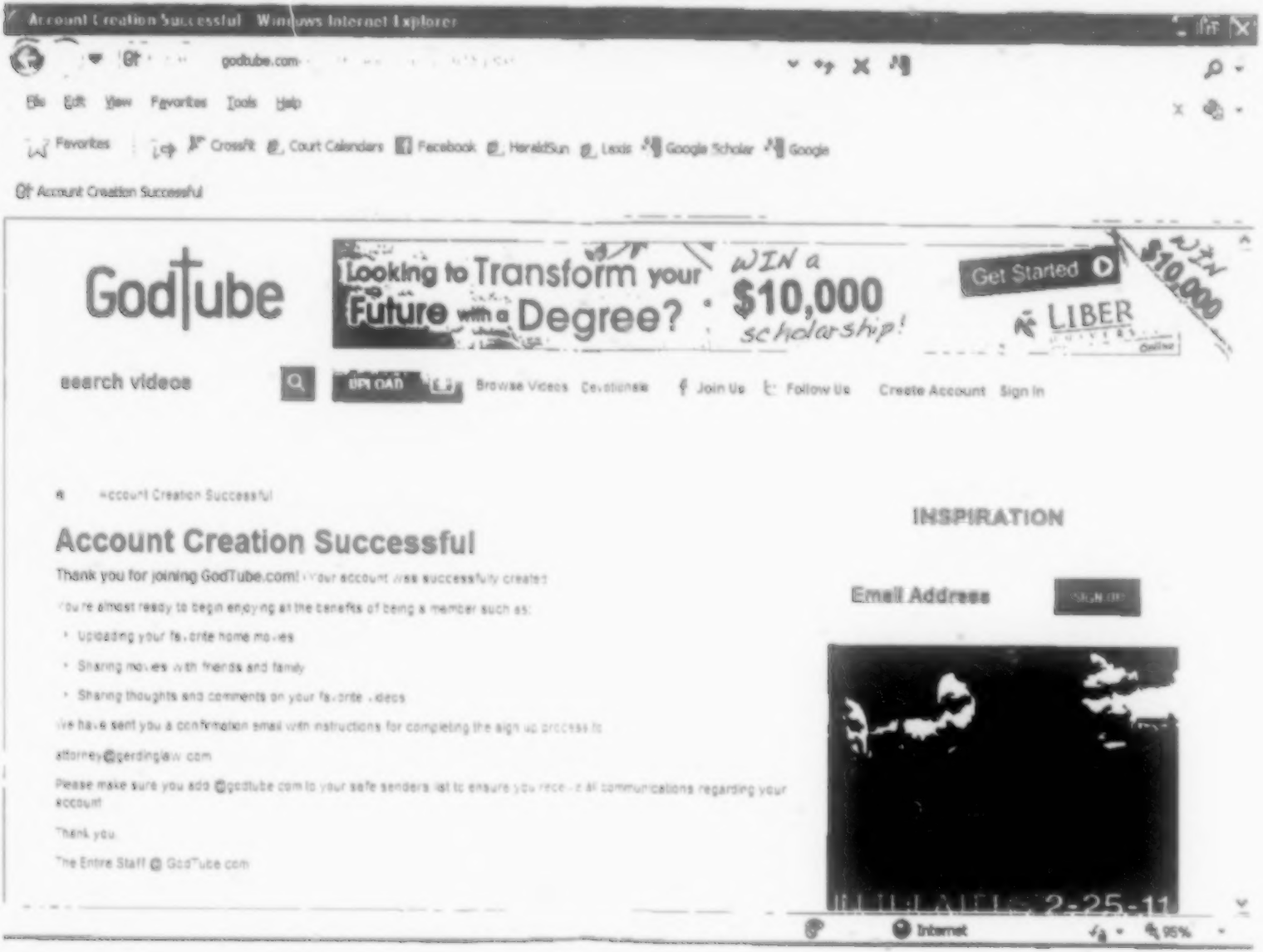
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www.bettycrocker.com Community section – Personal Information

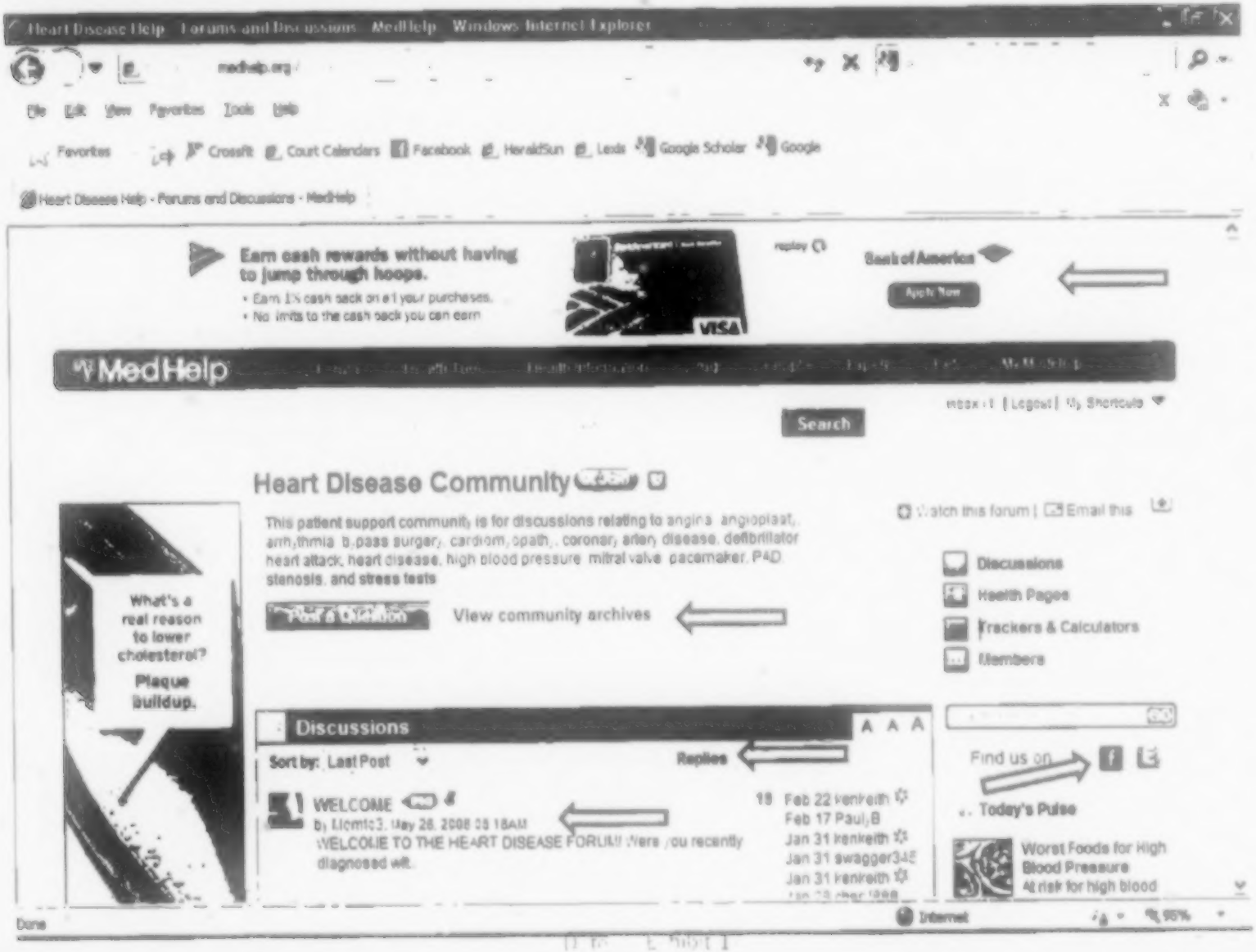


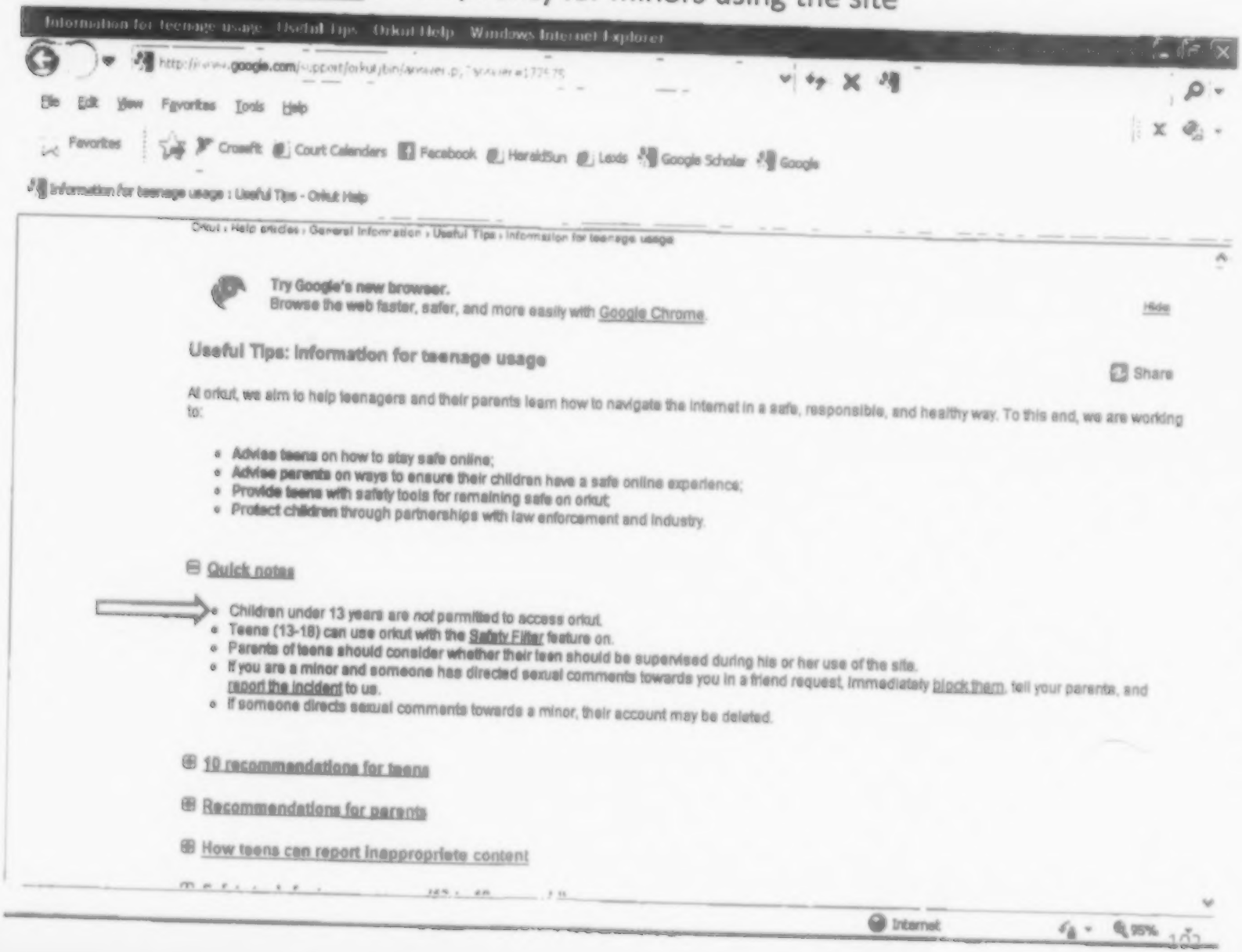
www.bettycrocker.com Community section – Message Board – Open Forum, usernames




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Information for teenage usage : Useful Tips - Orkut Help

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Hide

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At orkut, we aim to help teenagers and their parents learn how to navigate the Internet in a safe, responsible, and healthy way. To this end, we are working to:

- Advise teens on how to stay safe online;
- Advise parents on ways to ensure their children have a safe online experience;
- Provide teens with safety tools for remaining safe on orkut;
- Protect children through partnerships with law enforcement and industry.

Quick notes

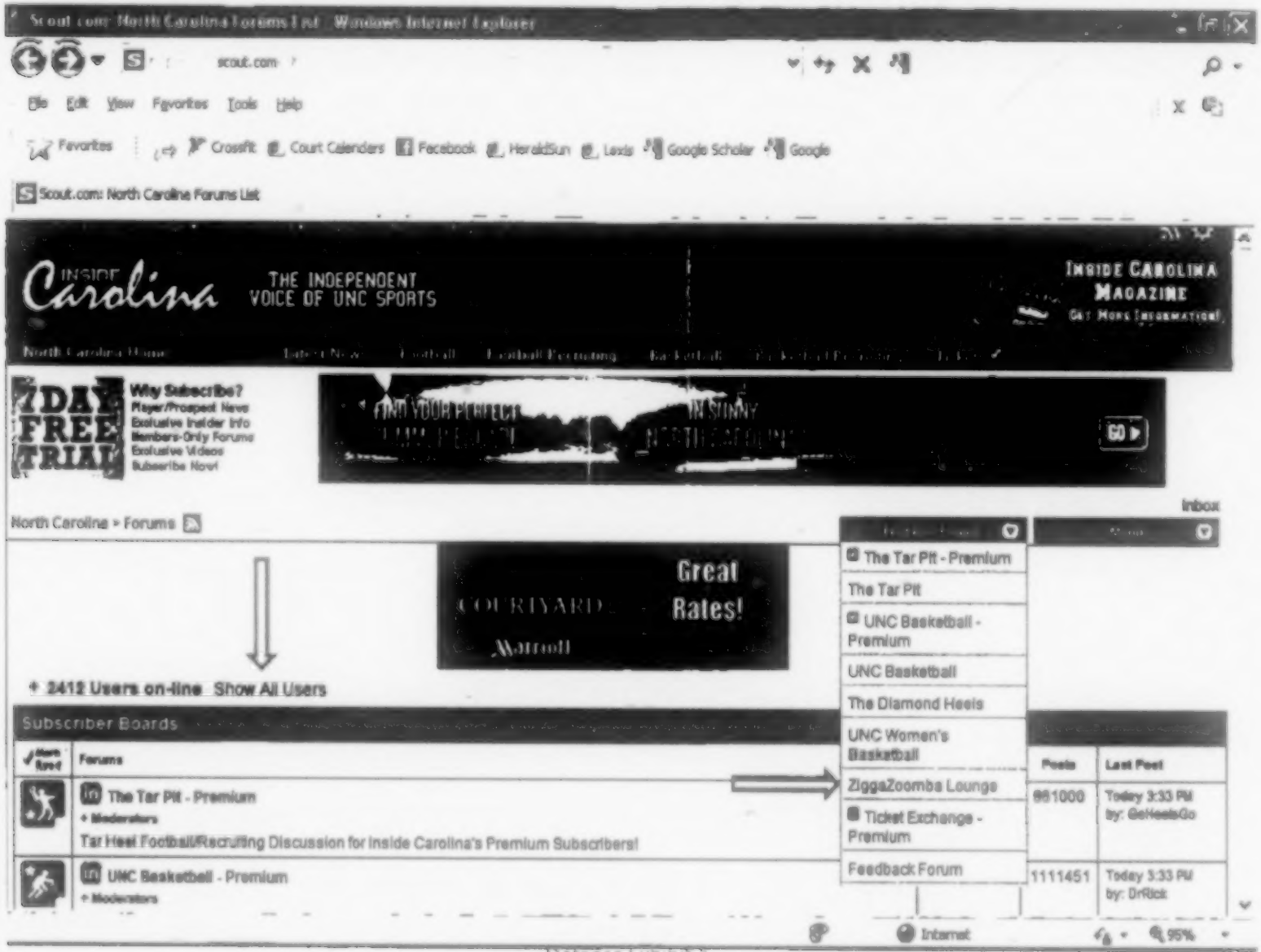
- Children under 13 years are *not* permitted to access orkut.
- Teens (13-18) can use orkut with the Safety Filter feature on.
- Parents of teens should consider whether their teen should be supervised during his or her use of the site.
- If you are a minor and someone has directed sexual comments towards you in a friend request, immediately block them, tell your parents, and report the incident to us.
- If someone directs sexual comments towards a minor, their account may be deleted.

10 recommendations for teens

Recommendations for parents

How teens can report inappropriate content

www.scout.com Forums, Advertisements, Lounge, view user profiles



http://www.facebook.com/pages/Bev-Perdue/11552180685 Bev Perdue – not logged in



http://www.facebook.com/pages/Bev-Perdue/11552180685 Bev Perdue – logged in

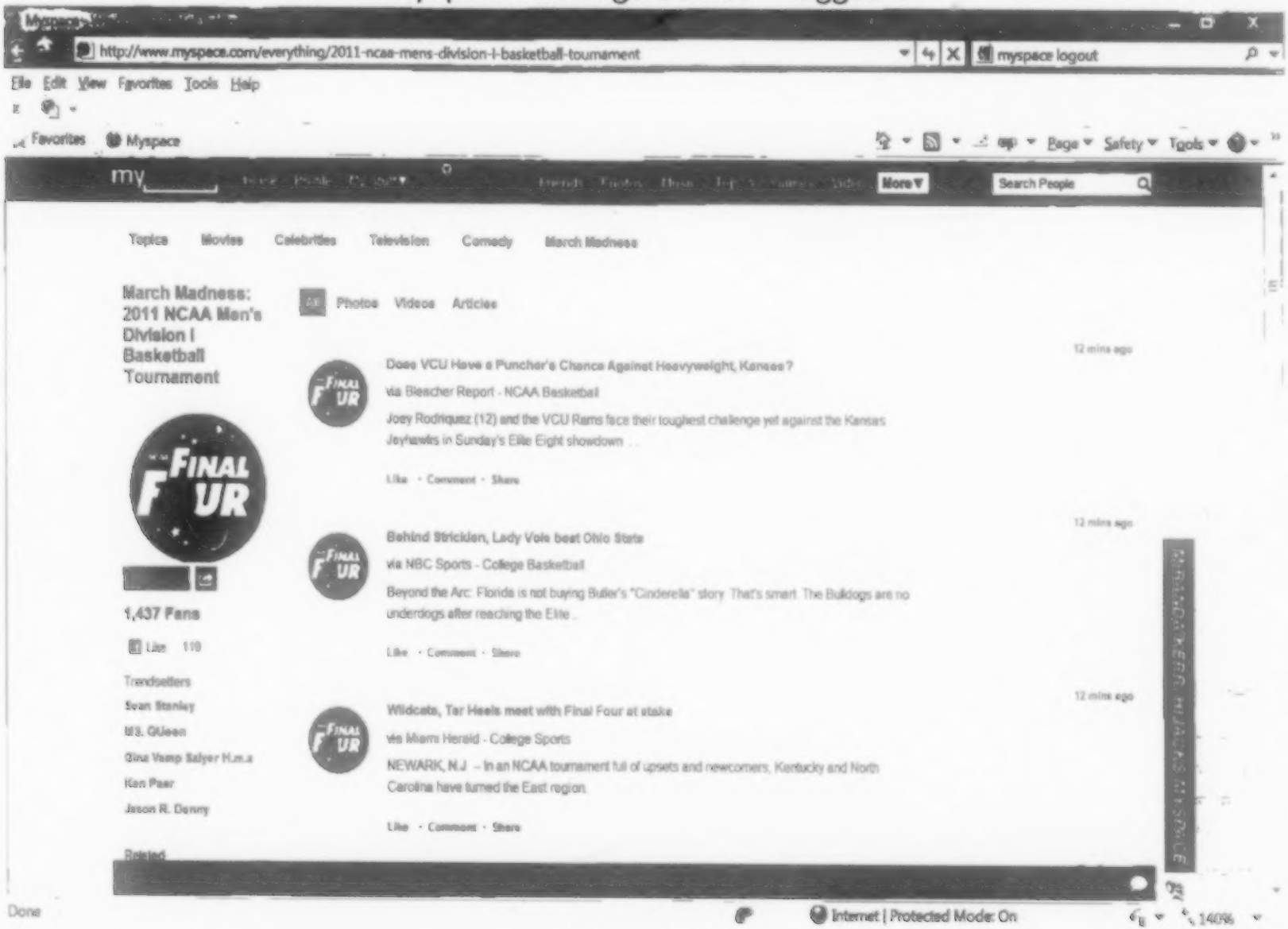


http://www.facebook.com/LDS Mormon Church Facebook page – not logged in



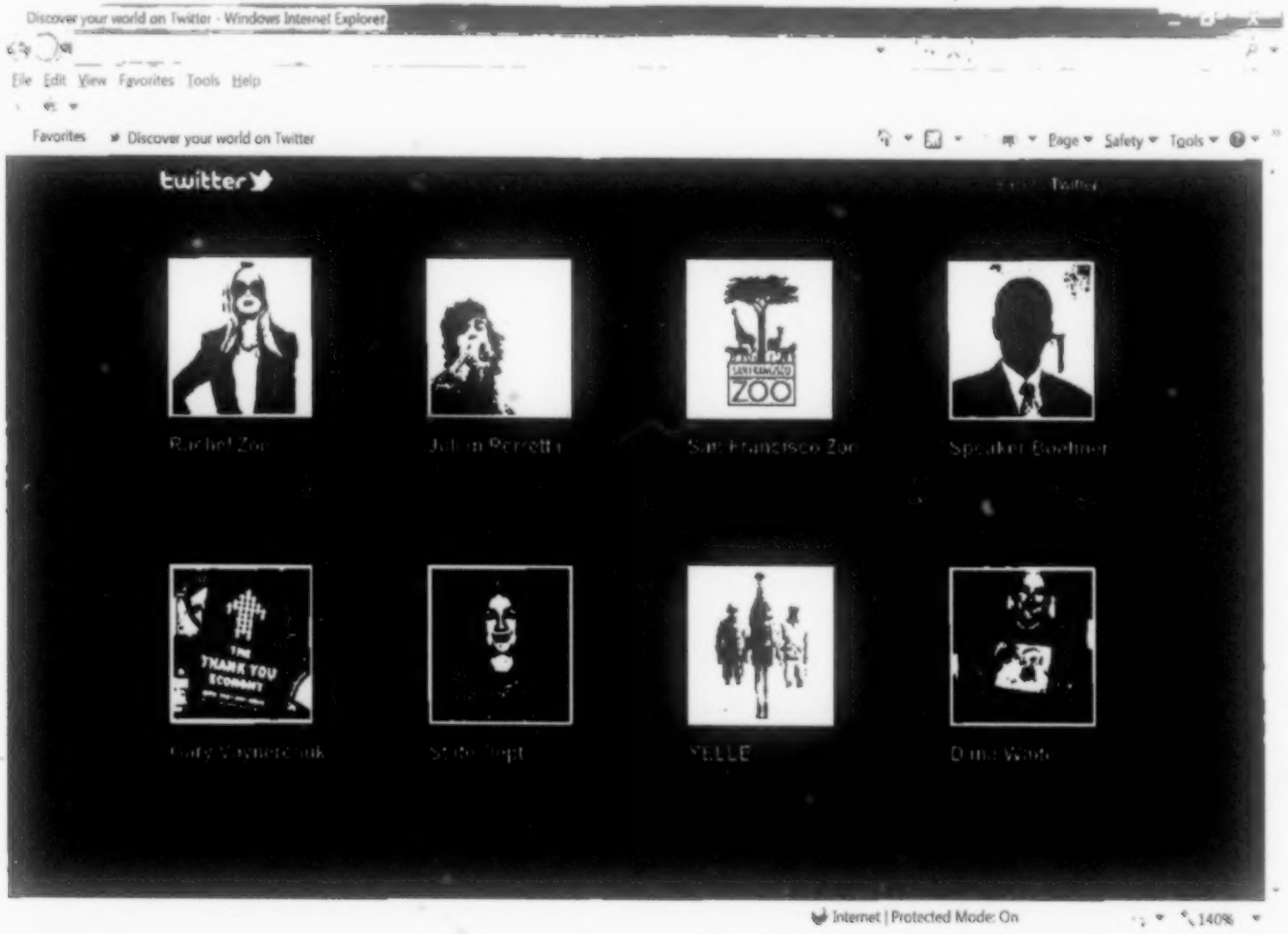
http://www.myspace.com/everything/2011-ncaa-mens-division-i-basketball-tournament

MySpace Message Boards – logged in



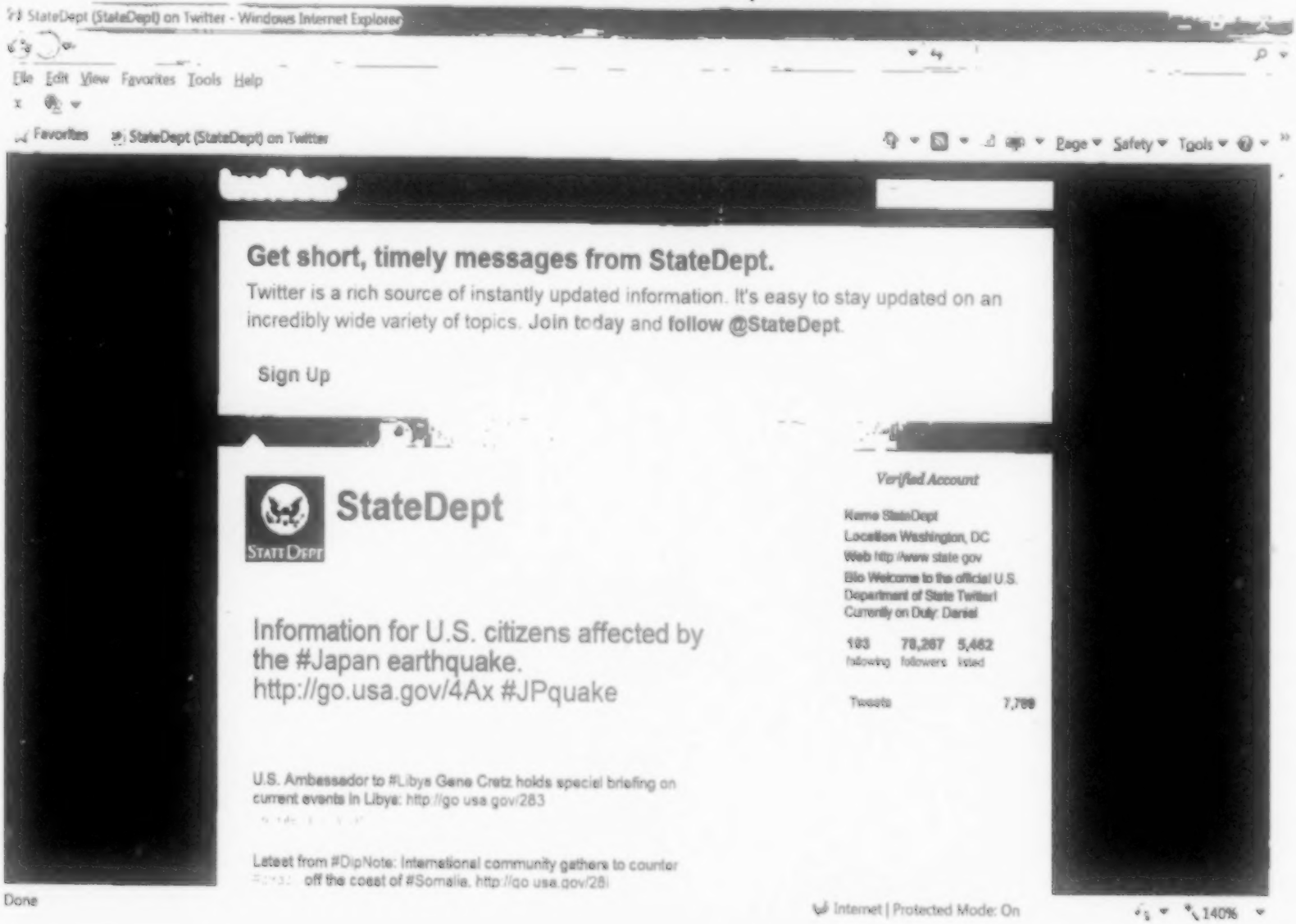
http://discover.twitter.com/?autoplay=true

Twitter – People to Follow – Includes US State Department

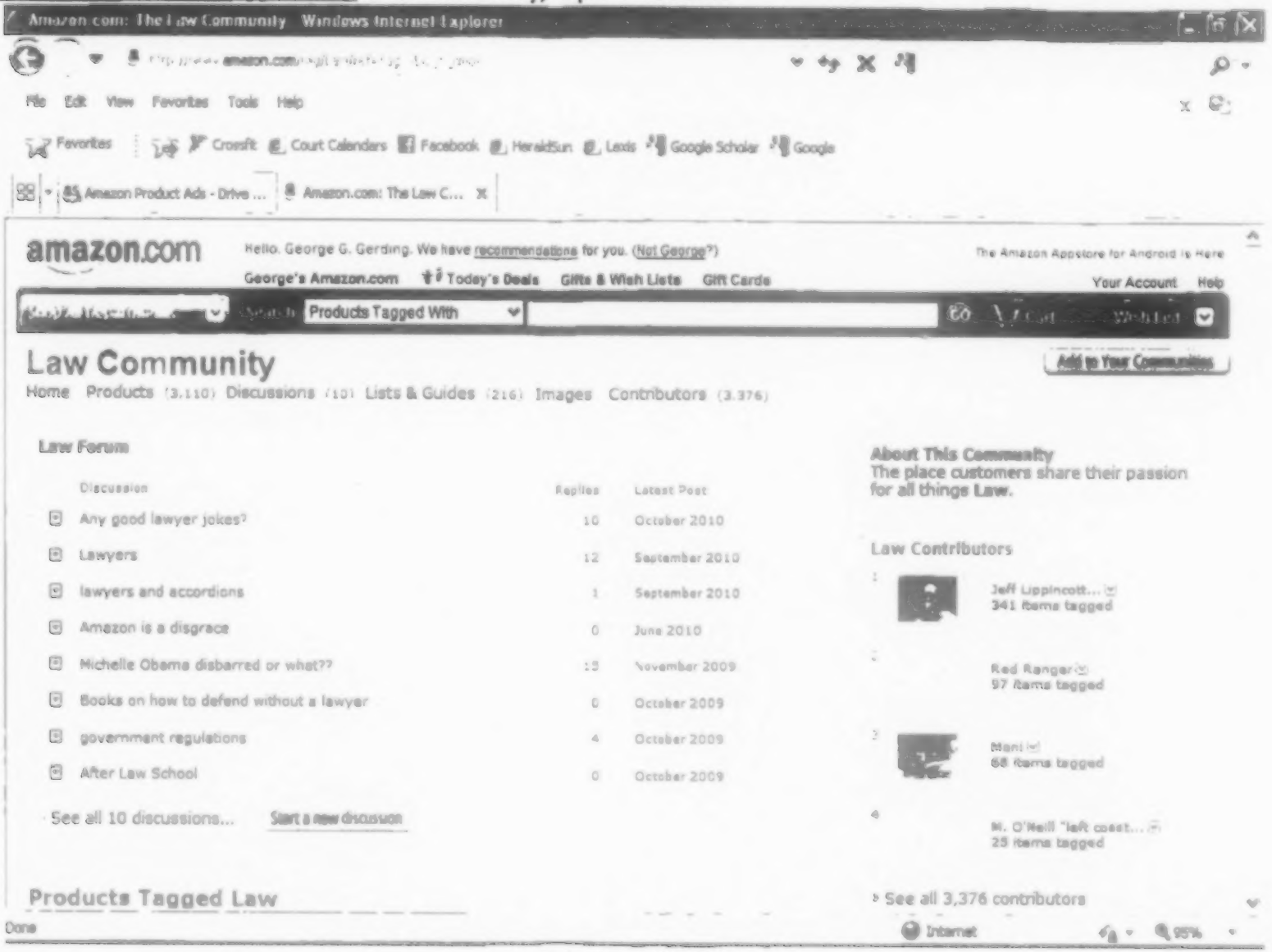


http://twitter.com/StateDept#

Twitter – US State Department



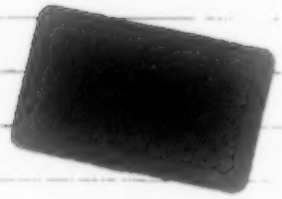
http://www.amazon.com/ Community, open forum



Search



Send J.R. a Message



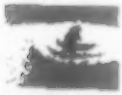


J.r. Gerrard Man God is Good! How about I got so much favor they dismissed the ticket before court even started? No fine, no court cost, no nothing spent.....Praise be to GOD, WOW! Thanks JESUS!

April 27 at 9:04am

Create an Ad

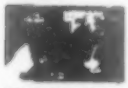
TinyPhotoshop: 5-Day Coupons



1 free TinyPhotoshop coupon emailed daily.

Like

Orange County Teachers



Get your Master's in Teaching degree online from the University of Southern California and elevate your teaching career!

Like

Thimbleton Times



Now use PayPal to snag some awesome artist-submitted tees. Coupon code "TinyPayPal10" gets you $10 off a $50 order.

Like

More Ads

NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10 CRS 57148

STATE OF NORTH CAROLINA

v

LESTER PACKINGHAM
DEFENDANT

STIPULATION [#1] BY PARTIES FOR TRIAL

The parties in the above captioned matters do hereby agree and stipulate to the following:

Lester Packingham was a convicted sexual offender subject to the North Carolina Registry requirements for Sexual Offenders, on and about May 22, 2010. He had previously been convicted of a sexual offense on September 16, 2002, involving a victim child of 13 years of age, in Carrabus County, NC, file #02CRS8475.

This the *29th* day of *May*, 2012:

s/Lester Packingham
Defendant Lester Packingham

s/Theresa K. Pressley
A.D.A. Theresa K. Pressley

s/Lynn Norton-Ramirez
Attorney Lynn Norton-Ramirez

NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10 CRS 57148

STATE OF NORTH CAROLINA

v

LESTER PACKINGHAM
DEFENDANT

STIPULATION [#2] BY PARTIES FOR TRIAL

The parties in the above captioned matters do hereby agree and stipulate to the following:

Lester Packingham was a convicted sexual offender subject to the North Carolina Registry requirements for Sexual Offenders, on and about May 22, 2010, and had acknowledged his obligations on February 9, 2009 as attached.

This the *29th* day of *May*, 2012:

s/Lester Packingham
Defendant Lester Packingham

s/Theresa K. Pressley
A.D.A. Theresa K. Pressley

s/Lynn Norton-Ramirez
Attorney Lynn Norton-Ramirez

SEE BOTH SIDES

IMPORTANT NOTICE

CHANGES TO NORTH CAROLINA SEX OFFENDER REGISTRATION LAWS

ALL REGISTERED OFFENDERS MUST COMPLY

Major changes to North Carolina's Sex Offender and Public Protection Registration Programs were signed into law this summer, and will take effect soon. As a registered offender, you are receiving this notice because session laws 2008-117, 2008-218, and 2008-220 directly affect you. Failure to comply with these new regulations could result in criminal penalties. This notice gives a brief summary of the changes. It is your responsibility to make sure you understand all the laws affecting registered offenders and to comply with the law. Please pay special attention to the items listed below.

FOR FURTHER INFORMATION

- For complete details on all law changes, or if you have questions about this notice, please contact your county sheriff's office.
- You may access the full text of the statutes governing the North Carolina's Sex Offender and Public Protection Registration Programs, including the recent session laws, via the General Assembly's website: www.ncleg.net

LAW CHANGES IMPACTING YOU

1. **IN PERSON REPORTING PERIOD SHORTENED TO THREE (3) BUSINESS DAYS:** Effective December 1, 2008, a person who is

required to register will have three (3) business days to **report IN PERSON to the Sheriff's office** to;

a. Register after establishing residency or being released from a penal institution;
b. Verify information after receipt of a verification form;
c. Provide written notification of any change of address;
d. Provide written notification of any intent to move out-of-state (and, if such person does not leave the state, they must notify the sheriff in person within 3 days after date they originally indicated they would leave the state);
e. Provide written notification of any change in academic status;
f. Provide written notice of any change in employment status at an institution of higher education.

2. **PROHIBITED FROM COMMERCIAL SOCIAL NETWORKING WEB SITES:** Effective December 1, 2008, it will be unlawful for a registered offender to access a commercial social networking Web site that permits minor children to become members or create or maintain personal Web pages. "Commercial social networking Web sites" 1) facilitate social introduction between persons; 2) allow persons to communicate with others through such mechanisms as a message board, chat room, electronic mail, instant messenger, etc.; 3) allow users to create Web pages or personal profiles; and 4) derive revenue from fees, advertising, or other sources related to the operation of the Web site.

3. **PROHIBITED FROM CHANGING NAME:** Effective December 1, 2008, it will be unlawful for a

registered offender to obtain a name change under Chapter 101 of the North Carolina General Statutes.

Lester Packingham 2/9/09 L.P.
[Signature]

4. **PROHIBITED FROM CERTAIN LOCATIONS:** Effective December 1, 2008, persons required to register who have committed any offense in Article 7A of Chapter 14 of the North Carolina General Statutes or any offense in which the victim of the offense was under the age of 16 years at the time of offense are prohibited from the following locations:
   a. **On the premises of any place intended primarily for the use, care, or supervision of minors, including, but not limited to, schools, children's museums, child care centers, nurseries, and playgrounds.**
   b. **Within 300 feet of any location intended primarily for the use, care, or supervision of minors when the place is located on premises that are not intended primarily for the use, care, or supervision of minors, including, but not limited to, places described in the previous paragraph (paragraph 4. a.) that are located in malls, shopping centers,** or other **property open to the general public.**
   c. **At any place where minors gather for regularly scheduled educational, recreational, or social programs.**

Exceptions: A parent or guardian of a minor may take the minor to any location that can provide emergency medical care treatment if the minor is in need of emergency medical care.

A parent or guardian of a student enrolled in a school may wish to consult the statutes, the school board, and/or the Sheriff's Office to see if they qualify for a limited exception to go to their child's school. Provided they comply with all statutory requirements, parents or guardians may be able go to their child's school to attend a conference with school personnel to discuss their child's academic or social progress or when requested by the principal. If a parent or guardian qualifies under this limited exception, they must comply with the statutory notification requirements including that they notify the principal of the school of their registration on the North Carolina Sex Offender and Public Protection Registry and of their arrival to and departure from the school. The parent or guardian must be under the direct supervision of school personnel at all times they are on school property.

There is an exception for persons eligible to vote at a prohibited location used as a voting place as defined by N.C.G.S. § 163-165. Such persons shall be on the premises only for the purposes of voting and shall not be outside the voting enclosure other than for the purpose of entering and exiting the voting place. If the voting place is a school, then they shall notify the principal of the school that they are a registered offender.

There is an exception for persons eligible under N.C.G.S. § 115C-378 to attend public school to be present on school property if permitted by the local board of education.

There is an exception for juveniles to be present at a location to receive medical treatment or mental health services if they remain under the direct

supervision of an employee of the treating institution at all times.

5. **ONLINE INDENTIFIERS:** Effective May 1, 2009, a person required to register must provide the Sheriff with any online identifier that the person uses or intends to use. An "online identifier" means electronic mail address, instant message screen name, user ID, chat or other Internet communication name, but does not mean social security number, date of birth, or pin number. If a person required to register changes an online identifier, or obtains a new online identifier, the person, shall within 10 days, report **in person** and provide the information to the Sheriff. Persons registered prior to May 1, 2009 may provide this information in person at the first verification of information that occurs on or after May 1, 2009.

Lester Packingham 2/9/09 L.P.
[Signature] 2/9/09

COUNTY OF DURHAM
OFFICE OF THE SHERIFF
WORTH L. HILL
SHERIFF

[SEAL] [SEAL]

The North Carolina General Statutes details certain restrictions on were sex offenders may live:

NCGS § 14-208.16. Residential restrictions.

(a) A registrant under this Article shall not knowingly reside within 1000 feet of the property on which any public or non public school or child care center is located . . .

(b) A violation of this section is a Class G Felony. (2006-247, s. 11(a).)

It has been determined that your residence, located at

311 S. LaSalle St Apt 42E

Is located within 1000 feet of the following school(s) or daycare(s):

Precious Moment Home Care

You will have **30 Days** form [sic] this date to obtain appropriate housing which complies with the requirements of NCGS 14-208.16. If you fail to comply with NCGS 14-208.16, you will be subject to arrest and prosecution. This Office has information on schools and licensed day cares and can advise you whether any particular address is similarly prohibited. Please note however that this information is drawn form [sic] other public databases and we cannot guarantee its accuracy.

I have received a copy of this notification and understand I must comply within 30 Days which will expire on *March 11, 2009*

Signature *Lester Packingham* Date *2/9/09*

Witnessed by Deputy/ Office Staff Assist. *Lt. G[illegible]* Date *2/09/09*

Deputy Signature /Office Staff Assist _____

Durham County Judicial Bldg., 1st Floor, P.O. Box 170, 201 E. Main Street, Durham, NC 27701 (919) 560-0900

Equal Employment/Affirmative Action Employer